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FOREWORD

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THE publication of this new *International Law Quarterly* is an act of faith: of faith on the part of the editors and the editorial Committee who have given it their support in the belief that there is scope for such work and that it will fulfil a need; of faith on the part of some who are interested in the other periodicals dealing with International Law which are already appearing in this country and the interests of which must not be prejudiced; above all, of faith on the part of the publishers who believe that there is a section of the public already interested in International Law or whose interest in it can be aroused and who will give to it a measure of support sufficient to ensure that the *Quarterly* can be made a commercial success. But if publication is an act of faith—of faith in what?

Primarily, of course, of faith in International Law. International Law, however, by itself cannot cure the ills by which this distracted world is beset. Law in the international sphere can at best do no more than municipal law does in the national sphere.

However great our reverence and our admiration for the municipal law of this country, we must regretfully admit that with all the strength behind it that flows from the power of the State to enforce its sovereign will, there are many troubles that

afflict us which our municipal law is unable to eliminate. It cannot make men refrain from strikes or 'go-slow movements'. It cannot prevent speculation and profiteering or frustrate the schemes of the self-seeking members of the community. It cannot even suppress the commission of crimes.

Similarly, in the international sphere, International Law will not exorcise the catastrophe of war; nor will it abolish power politics, currency conflicts or the many other subtle methods by which powerful States can use their strength to the detriment of weaker members of the international community.

Yet we all know that International Law has an essential part to play in the future. If the new world order is to be based on law and justice, that law must be International Law. International Law is an indispensable adjunct to the machinery without which a new order based on law and justice cannot be achieved in the modern world. The international machinery for the settlement of disputes and the maintenance of peace that has been set up by treaty on so large a scale in the course of the last half-century can serve but little purpose unless there exists a system of law on which an adjudication of the rights involved in the disputes can be based. Without such a law there can be no confidence that justice would be achieved.

Another element also must play its part. So long as the international system composed of sovereign independent States prevails, there can be no super-State to enforce observance of the rules and principles of International Law. Such observance must depend on the willingness of the individual States to do so. In the long run that willingness can only flow—at any rate in democratic countries—from public opinion. Public opinion must be the ultimate safeguard on which world order will rest.

Public opinion, however, will not ensure that governments abide by the rules and principles of International Law unless it is instructed and enlightened. It is the intelligent and progressive members of the community who must take the lead in such a matter. Can we feel any confidence at present that even in our country there is a sufficient interest in International Law, a sufficient comprehension of the part that it plays, to ensure that public opinion will always support the Government of the day in conforming to it, even to the extent of complying with an inconvenient and unwelcome adverse decision by an international tribunal?

The truth is that there is too great a tendency to regard International Law as a matter for the experts; and in this country the experts are few and far between.

It is to be hoped that the foundation of this new *Quarterly* will

bring home to a wider section of the community the part which International Law has to play in the modern world, and will lead to an ever increasing knowledge of the rules which it prescribes, so as to strengthen in the international sphere the forces that make for justice through compliance with law.

Public International Law is not the only matter within the purview of the new *Quarterly*. There is also Private International Law, or Conflict of Laws as it is more aptly named, a subject which, as the years go on, must become of increasing importance to the people of this country. The dream of the United States of Europe may or may not be realised in the political sense, but if the States of Western Europe are to endure, the intercourse between their peoples must increase. As intercourse grows, as the excess of nationalism dies away, trade will expand and the opportunities for travel and for settlement will return to the more normal conditions which prevailed before the war.

When this happens, the need for greater knowledge of the various national systems of law relating to marriage, citizenship, domicile and inheritance, will be more widely realised. All of these are matters of which a better understanding on the part of the legal practitioners of this country is very necessary, and for the acquisition of which the *Quarterly* should provide an invaluable medium.

INTERNATIONAL LAW IN PRACTICE [1]

By Sir ARNOLD D. MCNAIR, C.B.E., K.C., LL.D., F.B.A.

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I KNOW that many members of my audience are experts in International Law, but we have amongst our guests today a large number of lawyers who are not, and it is to the latter that my remarks are primarily directed. I shall try to place myself in the position of an English lawyer who seeks to know what International Law is in practice—its sphere of operation, the kind of questions determined by it, the courts which apply it, and the extent to which it is observed or enforced. I shall go particularly for my illustrations to the work of the Permanent Court of International Justice, of which our President and Chairman today was a member for fourteen years and President for three.

1. THE SPHERE OF OPERATION OF PUBLIC INTERNATIONAL LAW, to which I shall refer simply as International Law, is the legal relations between States, not their political or economic or moral relations, just as English law regulates our legal relations, and not our social relations, such as a dinner engagement, or our moral relations, such as the duty of charity or of being a good neighbour. The sphere of legal relations is not a constant one either between States or within a State, and the history of International Law, just like our own legal history, shows a progressive enlargement of the sphere of legal relations at the expense of the residuary sphere of non-legal relations. For instance, until fifty years ago, an employer in England was under no legal liability to compensate a workman for an injury in regard to which the employer was in no way to blame. Then a series of statutes brought the matter within the sphere of legal relations by imposing certain comprehensive obligations upon employers. Again, the Housing of the Working Classes Act, 1885, implied, on the letting of houses to ' persons of the working class ', a condition (since amended and amplified) that the house shall be reasonably fit for human habitation, thus reducing the area within which an owner of house property could act at his own discretion.

Likewise in the foreign relations of States there are certain fields of action or inaction in which they are legally answerable to other

[1] The Editors are indebted to the Grotius Society for permission to print this Address delivered at the meeting of the Society held in the Parliament Room of the Middle Temple on November 6, 1946.

States injured thereby, and certain fields in which they act, or decline to act, entirely at their own discretion and without being legally accountable. Instances of the former are the duties of a State in regard to aliens whom it has admitted into its territory, for they remain under the protection of their home State; the duty of a maritime State to afford a right of innocent passage through its territorial waters to foreign merchant ships; the duty to accord certain privileges and immunities to foreign diplomatic persons; the responsibility of States for injuries to foreign States, their territory and their nationals; the acquisition and loss of State territory; the use of the open sea; territorial and national waters; the conclusion, interpretation and discharge of treaties. All these matters and many others are regulated by rules of law. But in addition there is still a wide range of State activities of a kind which remain legally within a State's discretion and yet may seriously affect the political, economic and other interests of other States. Thus, except in so far as States may have entered into treaty obligations, there is no rule of International Law which compels a State to admit alien immigrants, though it may possess adequate natural resources the development of which would relieve the congested areas of the world and the resulting unemployment and suffering; or which prohibits a State from erecting high tariff barriers against foreign goods or from excluding foreign ships from its arterial rivers; for all these things and many others lie outside the sphere of inter-State legal relations unless brought within them by treaty; that is, they are said to lie within the 'domestic jurisdiction' of each State. This does not mean that the effects of State action within this reserved zone have no external effects or repercussions; it means that the State's right of action within this field is within its own discretion.

The expression 'domestic jurisdiction' is technical. It occurred in Article 15, paragraph 8, of the Covenant of the League of Nations, for the purpose of excluding the Council and the Assembly of the League from making a recommendation as to the settlement of a dispute arising 'out of a matter which by International Law is solely within the domestic jurisdiction' of one party, and it has been construed by the Permanent Court of International Justice in its advisory opinion upon the *Tunis and Morocco Nationality Decrees* in the course of a controversy between Great Britain and France arising from certain French decrees which purported to impose French nationality upon certain British subjects. The French Government contended that the dispute arose 'out of a matter which by International Law is solely within its domestic jurisdiction', so that the Council of the League had no jurisdiction in

the matter. The opinion of the Permanent Court contains the following passage:—

'The words "solely within the domestic jurisdiction" seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge. The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, within this reserved domain'.

But Great Britain and France had many years previously concluded treaties upon the matter, the effect of which, in the opinion of the court, was to remove the matter of the dispute from the domain of domestic jurisdiction into the arena of International Law, and accordingly the French attempt to oust the jurisdiction of the Council of the League failed.

This exclusion is repeated in paragraph 7 of Article 2 of the Charter of the United Nations, and in the opinion of some the exclusion is even more emphatic. That paragraph is as follows:—

'Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII'. [Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.]

Whatever you may think of this provision, it must be recognised that it reflects, in a few words, a fundamental limitation upon the sphere of operation of International Law by recognising a reserved domain within which a State can act at its own discretion—a domain which is being progressively diminished as International Law develops and extends its sphere. I beg to refer to Professor Brierly's article on 'The Shortcomings of International Law' in *The British Year Book of International Law* of 1924, where this matter is fully explored and illuminated, and I would stress in particular the relativity of the zone whose frontier is continually being diminished both by treaty and by the development of customary International Law.

Over a long period and within restricted limits, international lawyers by forensic argument, by judicial decision and arbitral award, and by their writings, can and do progressively extend the content and sphere of International Law so as to diminish the area

of this reserved domain. But the world cannot wait for this gradual and piece-meal process to supply the legal needs of a modern international society, and just as we in England for many years have been resorting more and more to the legislature to supplement our common law and equity, so the society of States is using more and more the analogous instrument of the treaty. The kind of law which the world is crying out for today is not merely the development of the traditional principles of International Law but something new—law which will restrain the use of aggressive force, law which will guarantee a minimum of human rights such as freedom of the person, of speech, of opinion and of religion, and which will regulate such matters as nationality, change of nationality and statelessness, navigation, and many other economic and social rights. Law of this kind cannot be developed by international lawyers by the processes mentioned above, but requires the pressure of public opinion upon Governments, which then take action by making multi-partite treaties.

It is the ordinary citizen—and not least the ordinary practising lawyer—who should press for the development of new treaty law to deal with such matters. International lawyers can guide public opinion and give expert help in the drafting of treaties. But the motive force must come from the citizen and operate upon his Government.

That is why Article 13 of the Charter of the United Nations imposes upon the General Assembly a duty of 'promoting international co-operation in the political field and encouraging the progressive development of international law and its codification'. That means, the progressive diminution of the area of domestic jurisdiction or State discretion by the corresponding enlargement of the scope and jurisdiction of International Law.

While the analogy that I have drawn between the limits of the sphere of legal relations as between States and within a State respectively is a true one, I must draw attention to a fundamental difference in the consequences of the existence of these limits in international society and within the framework of a State respectively. Within a State a serious situation may arise owing to the self-regarding action of an individual or group of individuals within the area of discretion permitted to them by the law, that is to say, within their domestic jurisdiction or reserved domain. An organised group of individuals engaged in a vital national activity, such as transport or the production of food or fuel, may withhold their labour. A landowner may decline to sell land for small holdings or houses or a school. A monopolist group of traders may decline to sell their goods except at exorbitant prices. All these pieces of

anti-social action or inaction may at the given moment be lawful. But the State remains supreme and the Government, by taking executive action or procuring legislative action, has a reasonable prospect of solving the crisis. On the other hand, in international society there is no super-State, no supreme authority which can step in and curb the self-regarding action of a State acting within its domestic jurisdiction, except in so far as the Charter of the United Nations, which, though 'United', remain independent States, has authorised the Security Council and the General Assembly to exert the powers entrusted to them—powers which, however valuable, cannot be likened to those of the Government of a State. It is only by the development of world public opinion directed towards an extension of the realm of law in international relations that the sphere of uncontrolled State discretion, which at present often leads to legal anarchy, can be curtailed.

2. THE COURTS ADMINISTERING INTERNATIONAL LAW

The quickest way in which a lawyer can form an impression of the content of International Law and the courts which are administering it, is to spend an hour with one of the volumes of *The Annual Digest and Reports of Public International Law Cases*, edited by Professor Lauterpacht, which now cover the years 1919 to 1942 inclusive. It would be useless for me to recite the classification of topics upon which those reports are based. But it is worth noting the tribunals from which the decisions come. They are either international or national. Amongst the former you will find the Permanent Court of International Justice at The Hague, the Permanent Court of Arbitration at The Hague, special arbitration tribunals, Claims Commissions established by pairs of States, and the Mixed Arbitral Tribunals set up under the peace treaties which concluded the First World War. Mr. Beckett's article in *The British Year Book of International Law* of 1930, and Professor Lauterpacht's *Development of International Law by the Permanent Court of International Justice*, published in 1934, will show you how large was the contribution made by the Permanent Court even during the first decade of its activity. Then there are national courts throughout the world making their contribution.

Let me mention a few recent cases in which British courts have contributed to the body of International Law—*Luther* v. *Sagor* on the recognition of a revolutionary Government; *Duff Development Co.* v. *Government of Kelantan* and *The Jupiter* on the immunity of States and Governments and their property from legal proceedings; *Engelke* v. *Musmann* on diplomatic immunities; *Re Piracy Jure*

Gentium; *The Cristina* and *The Arantzazu Mendi* on questions arising out of the Spanish Civil War; *Chung Chi Cheung* v. *The King* on the status of a foreign public armed ship, and *Sovfracht* v. *Gebr. van Udens Scheepvart en Agentuur Maatschappij* upon the effect of the belligerent occupation of territory by an enemy. Even a glance at the volumes of *The Annual Digest* referred to will astonish many of you by the number and variety of decisions given throughout the world. Every year yields one hundred or more decisions from international and national tribunals which require to be reported there.

In English law the rights and duties of individuals are in part created for them by the common law or equity or statute, and in part are due to their own activities in making contracts or in changing their status. Likewise, in International Law, many of the rights and duties of States arise from customary and binding rules such as those dealing with the freedom of the high seas, the right of innocent passage by merchant ships through the maritime belt, responsibility of States for denial of justice or other injury to the nationals of other States, diplomatic privileges and immunities, and so on, while a steadily increasing number of rights and duties are acquired by and imposed upon States by their own consent in the making of treaties, either bi-partite or multi-partite, for instance, extradition treaties, the North Sea Fishing Convention of 1882, the Anglo-American Liquor Convention of 1924 upon the carriage of alcoholic liquor by British ships in and near American waters, the Opium and Drugs Convention of 1925 regulating the manufacture, sale, import and export, use and distribution of these things. One of the outstanding features of the past fifty years has been the output of multi-partite treaties which have created a vast code of treaty law, though mainly in technical spheres such as shipping, air, navigation, postal and other communications, copyright, patents and trade marks, customs, health, fishing, etc. This body of law is sometimes referred to as ' international legislation ', a term which is only safe if it is recognised as a metaphor, for there is no international legislature, and a treaty, unlike a statute, only binds those who accept it.

When we look at the decisions of the Permanent Court of International Justice—whether judgments *stricto sensu* or advisory opinions given at the request of the Council of the League—we shall find that the majority of them turn on treaty obligations. Between 1922 and 1940 the Permanent Court (as I shall call it) delivered thirty judgments, twenty-seven advisory opinions and a number of interlocutory orders. Ignoring the third class, we find that a majority of the decisions (judgments and opinions) deal with

questions arising under treaties, and of these a large number with questions arising under the peace treaties which concluded the First World War or agreements ancillary to them. Thus, amongst the subject-matters of cases which went to the Permanent Court under treaties may be mentioned: the status of the Kiel Canal (*The Wimbledon*), Germany being neutral in a war between Poland and Russia; Minority Schools in Upper Silesia and in Albania; the status of Danzig and of Memel; the navigation of the Oder and the Danube; the constitution of the International Labour Organisation; the legality of the proposed Austro-German Customs Union; certain concessions relating to power, light and water in Palestine granted by the British Mandatory Government; certain Free Zones in parts of France adjacent to Switzerland; a dispute between Holland and Belgium as to the diversion by the latter of the waters of the Meuse.

I shall mention four cases in particular: *The Lotus*, *Eastern Greenland*, the *Mavrommatis Concessions* and the *Danzig Railway Officials*.

The Lotus raised the fundamental question of the extent, both personal and geographical, of the criminal jurisdiction of States permitted by International Law. A collision occurred on the high seas between a French and a Turkish merchant ship which resulted in the sinking of the latter and the death of eight Turkish nationals. When the French ship arrived at Constantinople, the Turkish captain and the French navigating officer were prosecuted for, and convicted of, what we should call manslaughter. The French Government protested and contended that Turkey had no criminal jurisdiction over an act committed on the high seas by a foreigner on board a foreign vessel, and that the flag State of that vessel had exclusive jurisdiction as regards such acts. Turkey was not a party to the Statute of the Permanent Court, and was under no obligation to refer the dispute to it, but agreed with France to refer the dispute to the Court. By the Peace Treaty of Lausanne of 1923, to which (amongst other Powers) France and Turkey were parties, the capitulatory regime in Turkey was abolished, and by a supplementary Convention of the same date Turkey agreed that ' all questions of jurisdiction shall as between (her) and the other contracting Powers (including France) be decided in accordance with the principles of international law '. The question that the Court had to answer was not whether there was a positive rule of International Law conferring upon Turkey criminal jurisdiction over the French navigating officer but whether there was any rule prohibiting the exercise of such jurisdiction. The Court, by the President's second and casting vote, held that Turkey had not acted in conflict with International Law. The judgment is based on the

principle that the criminal negligence of the French officer, while occurring on the French ship, produced its effects on the Turkish ship and thus within Turkish jurisdiction, though he was not at the time corporeally within the limits of Turkish jurisdiction. Most of the dissentient members of the Court also approved this principle, though they were not prepared to apply it to the facts of this case. The judgments contain great learning, and American, Belgian, British, French and Italian decisions are cited. The net effect of the decision is generally regarded as an authoritative recognition by International Law of what has been called 'objective territorial jurisdiction', that is to say, of the rule that criminal jurisdiction is not limited to the State in whose territory the criminal happens to be at the date of his crime.

The *Eastern Greenland* case was a dispute between Denmark and Norway which came before the Permanent Court because both parties had signed what is called the 'Optional Clause' in the Statute of the Court, whereby States signing that clause accepted as between themselves its jurisdiction as compulsory in the classes of legal disputes therein defined. Very briefly, Denmark's complaint was that, whereas she had long exercised sovereignty over the whole of Greenland though only part of it was actually colonised, Norway had in 1931 published a proclamation to the effect that she had 'proceeded to occupy certain territories in Eastern Greenland'. After prolonged legal and historical argument, and the examination of official and other documents, the Court, by a majority of twelve judges to two, upheld the Danish contention and, in effect, confirmed Denmark in the enjoyment of sovereignty over the whole of Greenland, amounting to close upon a million square miles. The judgment throws much light upon the conditions required to constitute a good title, the nature of the acts required to show a continuous exercise of sovereignty, the effect of admissions made in the course of diplomatic negotiations, and estoppels resulting from treaties.

The Permanent Court was a Court for the adjudication of disputes between States, and individuals as such had no access to it. The *Mavrommatis Concessions* case, however, illustrates the way in which the Court could become seised of a dispute which began as a dispute between an individual and a foreign State. Before the First World War the competent Ottoman authorities had granted certain concessions relating to the supply of water and electric light and power in Palestine to one Mavrommatis, a Greek national. After that war the British Mandatory Government granted to one Rutenberg a concession which overlapped these pre-war concessions. Mavrommatis protested and endeavoured to induce the British

Colonial Office to make satisfaction to him. When his negotiations with the Colonial Office failed, the Greek Government took up his case. In the words of the majority judgment of the Court: 'The dispute then entered upon a new phase; it entered the domain of international law, and became a dispute between two States'. When that happens, the Court continued, 'a State is in reality asserting its own rights—its rights to ensure, in the person of its subjects, respect for the rules of international law'. Later: 'once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant'.

In its advisory opinion in the case of the *Danzig Railway Officials*, the Court made an important statement upon the position of individuals in International Law. While admitting that an international agreement (in this case a treaty between Poland and the Free City of Danzig regarding the rights of certain Danzig railway officials transferred to the Polish Railway Administration) 'cannot as such create direct rights and obligations for private individuals . . . the very object of an international agreement, according to the intentions of the contracting parties, may be the adoption by the parties of some definite rules creating individual rights and obligations and enforceable *by the national Courts*'.[2] And in this case Poland ought to have incorporated the agreement into her municipal law in such a way as to enable the Danzig officials to enforce their rights in the Polish courts. I shall merely draw attention to the fact that the question whether the rights of the individuals, if and when created, are rights within the sphere of International Law or within the sphere of national law, is controversial'.[3] I prefer to express no opinion on the controversy.

3. THE OBSERVANCE OF INTERNATIONAL JUDGMENTS AND AWARDS

The regularity of the observance of the awards and judgments of international tribunals is not adequately realised. There is not a single instance of a party declining to carry out a judgment of the Permanent Court, and it is a very rare occurrence for a party to any international litigation to decline to give effect to an award or judgment. The 'stickiness' occurs at an earlier stage in the proceedings. A State is sometimes reluctant to refer a dispute for adjudication, but, once it has done so, it abides by the result, however unpalatable it may be. The Permanent Court had no sheriffs or bailiffs, but what matters is not enforcement but observance.

[2] Italics mine.
[3] See Beckett in *British Year Book of International Law*, 1930, p. 4, and Lauterpacht, *Development of International Law by the Permanent Court*, p. 52.

In conclusion I base my appeal to English lawyers for a deeper interest in International Law on two grounds: on the ground that the common law of England and the principles of equity as developed by many generations of English lawyers are not exerting their proper influence in the building up of a comprehensive system of International Law. I hope I have given you some notion of its present very considerable content, but it is still in a plastic state, and it is clear that if it is ever to comprise the whole effective range of inter-State relationships, much expansion is required. One of its main sources has been and will be, in the words of Article 38 (1) of the Statute of the International Court of Justice: '. . . the general principles of law recognised by civilised nations'.

Unless English lawyers will devote more time and interest to the subject, as practitioners, as members of international tribunals, as writers of treaties and articles, by joining societies such as this, and generally by admitting International Law within the range of their professional interests, English law, one of the most characteristic products of England, and one of her most valuable exports, will not pull its weight in establishing the rule of law between nations. We have always been great colonisers, and our colonists have taken our law with them. We must not neglect a similar opportunity in the international field.

My second ground is that of national duty. No person can be a good citizen today if his civic interests are confined to his own parish or even to his own country. He must spare some part of his time to be a citizen of the world. Is it not also true that no English lawyer can afford to ignore the principles which govern the legal relations of States and determine their legal disputes? If it be true, as most of us here today believe, that the States of the world can only be safely and effectively organised on the basis of a legal order, is there not incumbent on every lawyer a duty to aid in this process, either actively or merely as an element in the formation of an enlightened professional opinion? Anyone who has had much contact with foreign countries and individuals since the end of hostilities will agree with me when I say that our national prestige is higher than it has been for twenty-five years. A very large part of the world has been immensely impressed by our way of life and our free institutions and their durability under stress. In the development and in the guarantee of these institutions our law plays a large part, and the world is now waiting for us to expand this tradition to a wider sphere.

PLEA FOR A WIDER STUDY OF PRIVATE INTERNATIONAL LAW

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The influence that a *Quarterly Review*, if properly supported, may exert upon the development and improvement of Private International Law can scarcely be exaggerated. If Public International Law is of vital importance in the interests of world peace, as indeed it is, its counterpart in private law is equally important in the interests of the social and commercial well-being of society. The growing contraction of the world is a phenomenon that has its effect in the realm of law. The daily increase in the rapidity and facility of travel, the constant search of the business man for foreign markets, the tendency to use the international telephone for the completion of legal transactions, which has already led to the reprehensible practice of solemnising marriages over the trans-Atlantic telephone, the armies of occupation that will remain a feature of life for perhaps a generation, the urge of a war-weary world to abandon the fetish and the folly of isolation—all those factors must inevitably tend to increase the number of foreign element cases that come before the courts. Unless, therefore, we have a satisfactory system of Private International Law, and one which commends itself as just and reasonable to the litigant, whatever his nationality may be, it is clear that the placidity of day-to-day intercourse between the subjects of different nations will not remain unruffled. The present English system leaves a good deal to be desired. In several of its aspects it is calculated to arouse dissatisfaction in other countries. To take a recent example, the annulment of a voidable marriage between parties domiciled in country X, but resident in England, for a cause repudiated as sufficient by the law of X, can scarcely arouse the enthusiasm of foreigners for the tactful prudence of the English law-giver. Conversely, it would be idle to deny that the English lawyer finds much in foreign systems to merit his disapproval. He feels a certain difficulty, for instance, in agreeing that the wife of a domiciled Englishman should be able, by virtue of a transient residence in Nevada, to obtain on unsubstantial grounds a divorce that will be regarded as valid in Illinois, the State

of her origin, and therefore presumably in the other forty-seven States of the North American Union.

It ill behoves an English lawyer, however, to criticise the legal systems of other countries. His first duty is to put his own house in order. A certain malaise has distinguished English Private International Law for some time, and the object of the following somewhat random remarks is to justify this fact.

1

Perhaps the primary and fundamental cause of the rather haphazard manner in which this department of English law has been, and is being, developed, is its neglect as a subject of academic study. Although conditions in this respect are showing distinct signs of improvement, it is none the less true that up to the present the subject has played a non-existent or only a minor part in the leading law examinations of the country. Moreover, not a single university in England possesses a chair of Private International Law, although the British Empire probably contains a greater number of different laws than any other political unit. Orderly and systematic study, not opportunism, is essential before either counsel or judge can fulfil his functions in a manner conducive to the scientific development of the law. Only the select few can plunge in *medias res* and make a contribution to learning and progress. The implications of this academic neglect are serious. Counsel, confronted with a foreign element case, and only too often finding himself unfamiliar with Private International Law as a whole, tends to take the line of least resistance by placing his reliance and resting his argument upon some textbook writer, courageous enough to state the relevant rule in a pithy and easily understood statement. The effect of the argument upon other parts of the subject is frequently overlooked. If this method is contrasted with, for instance, the consideration given by counsel to a point in the English law of torts, a topic which he is well able to envisage as a whole in all its bearings, it becomes apparent how much Private International Law must suffer from the fact that its ultimate administrators have not been well versed in the general principles upon which it is based. To administer an unfamiliar subject with far-seeing sagacity is an exceedingly difficult task.

2

In the all-important matter of the status of marriage, it is a misfortune that decisions upon divorce and nullity should be given

in English courts in total disregard of whether they will be recognised in other countries. If it were possible to construct a system of Private International Law *de novo*, one obvious aim would be to ensure as far as possible that a judgment given in the *forum* would command recognition abroad, and especially in the country of which the parties are nationals. A judgment that is effective only in the country where it has been pronounced is unsatisfactory. This is a situation that arises far too often in the case of matrimonial causes. It results from the fact that questions of status are governed in England by the *lex domicilii*, but in most Continental countries by the *lex patriae*. It arises, for instance, if a Frenchman, domiciled in England, obtains a divorce from the High Court for a cause not regarded as sufficient by French law. In such a case the English judge has no option but to grant a decree in accordance with the *lex fori*, but nevertheless his decree will be ineffective in France. French law, in common with several other systems, is prepared to admit the jurisdiction of the court of the domicile, but before it will recognise the decree it requires, in accordance with the doctrine of cumulation, that the ground upon which the petition was based should be adequate not only by the *lex fori* but also by the *lex patriae*. Having regard to the authorities, the judges, of course, cannot amend the doctrine upon which the international law of divorce is based, but there is no reason why public interest in the matter should not be stimulated and pressure be brought to bear upon the Legislature to alter a situation as unnecessary as it is undesirable.

In the case of nullity decrees, however, the judges have been far from blameless. They have widened their own jurisdiction to the utmost limit, a policy which is much to be welcomed, but on the question of choice of law, they have shown a most disturbing tendency to apply the *lex fori* without the slightest consideration for the *lex domicilii* of the parties. In this part of the law, the prevailing sin is the failure to distinguish jurisdiction from choice of law.

3

Lord Bowen once said: 'Law is the application of certain rules to a subject-matter which is constantly shifting. What is it? English life! English business! England in movement advancing from a continuous past to a continuous future'. Apt words which, when applied to Private International Law, remind us that we stand on a wider stage than that described by the learned judge, for we must have regard to the world in movement. Yet in

several directions we find stagnation instead of progressive development. Doctrines that perhaps were congenial to an earlier environment still survive in a changing world. Mention may be made of the retrospective effect of a nullity decree in the case of a voidable marriage; the incapacity of an infant or a wife to acquire a separate domicile; the failure to modify the part played by the English *lex fori* in an action on a tort committed abroad; the too rigid application of the principle that the proper law of the contract is that which is intended by the parties; the rule, now at last being breached, that a trespass to foreign land is not justiciable in England. In some respects the paternal attitude of the Victorians is still a little too evident. Thus, for instance, the view has yet to languish that capacity to marry depends upon the *lex domicilii* of each party prior to the marriage. A domiciled Englishwoman of mature age, therefore, cannot contract a marriage that is valid by English law with her uncle, a domiciled German, even though the ceremony is performed in Germany where such a union is lawful, and even though the matrimonial residence is immediately and permanently established in Germany. In a few instances there has been a welcome break with the tradition of the past, as for instance by the recognition that a polygamous marriage between parties of polygamous origin is not to be branded as mere concubinage. But even here, it is still ruled, generally to the ultimate discomfiture of an English girl, that whether a marriage is monogamous or polygamous is determined solely by the *lex loci celebrationis.*

In the particular and fundamentally important matter of domicile the law has considerably developed during the last fifty years, but it may be doubted whether the development has been wise and whether even now matters are not being made worse. Only too often does it happen that the legal domicile bears a very remote relation to what in fact is the permanent home of the *de cujus.* Indeed, under the doctrine of the revival of the domicile of origin, or when domicile is fallen back upon in order to render workable the peculiar form of *renvoi* that is now fashionable, it may well happen that a man is given a domicile in a country in which he has never even been present. Legal incantations, if followed too literally, are apt to produce results out of touch with reality and common sense. In several House of Lords' pronouncements it has been said that, for a man to acquire a domicile in a country, his intention must be to reside there for ever. Thus it inevitably comes to pass that if he harbours the vainest of vain hopes of an ultimate abandonment of the country in which he and his family have been established for life, what is in truth his

permanent home, if words are to have any sensible meaning, will be held not to represent his domicile.

4

The Courts have consistently failed to realise, or at least to agree, that the rule of English law which applies automatically to a purely domestic case need not necessarily be extended to a foreign element case. To take a well-known example, it has been said more than once that a contract subject to a foreign law will not be enforced in this country if it offends the English doctrine of public policy. At first sight this seems to record an obvious truism, but upon further reflection it is seen to be far too sweeping. Unless each and every inhibition traceable to the doctrine of public policy represents a standard of morality of such momentous consequences that it must be enforced in all English proceedings, it is obvious that, before a sub-rule falling under the doctrine is applied to a transaction governed by a foreign *lex causae*, the purpose which it is designed to fulfil and the evil against which it is directed should first be ascertained. Are all transactions no matter when or by whom completed to be branded as void merely because they would have been contrary to public policy had they been connected solely with England? A claim by a prostitute to recover the price of her services will clearly and rightly be disallowed, for in no circumstances can the English court have any truck with sexual immorality. But is it equally clear that a marriage brokerage contract, or a contract in restraint of trade, or an agreement to buy off a prosecution, is to be repudiated, notwithstanding that it is connected solely with some foreign country where an arrangement of that kind represents no departure from strict virtue? Before what Dicey once called 'this high moral line' is taken, it is only reasonable to inquire whether English law is concerned to strike at acts in England, or whether it seeks to regulate a wider domain.

5

A common statement to be found in any textbook on Private International Law is: 'the law on this topic is in a state of complete confusion'. Unfortunately the charge is only too often justified. Sometimes, as in the case of the assignment of movables, the confusion is mainly due to the paucity of relevant decisions. Where this is the cause it is obvious that something may be gained if regard is had to the relevant rules obtaining in other countries in which the particular problem has more frequently been *sub judice*. The English lawyer, however, is not as a rule ready and willing

to draw his inspiration from foreign sources, and it is one of the objects of the *International Law Quarterly* to overcome this reluctance. Attempts will be made from time to time to show how other legal systems have solved problems upon which there is little English authority. In other cases the confused state of the law is caused by the impossibility of determining the exact *ratio decidendi* of the relevant authorities. If there are two or more divergent reasons upon which a decision may be supported, nothing is more inelegant, or for that matter more unnecessary, than that the reader should be left in doubt as to which of them was decisive. A typical illustration is this. Domiciled foreigners, who were married in England and who have resided there for a few months, are parties to a nullity suit. The judge assumes jurisdiction. We require to know whether he has based his competence on the English residence or on the English *locus celebrationis*, or on the combination of these factors. Frequently we still look in vain for the answer. This judicial technique is no doubt intriguing to the jurist, but it is troublesome to the practitioner. The merit of a system of case law is that a client can be advised with reasonable certainty what his legal position is, but the system breaks down if the principle upon which the judge relied is unascertainable.

Objection may well be taken to these few remarks on the ground that they stress the defects of the law to the neglect of its many excellent features. The object, however, has been to suggest that the time is now ripe for the renaissance of English Private International Law. This will be assured if it becomes a subject of wider study and controversy, if its shortcomings are ventilated and proposals for their removal discussed, if there is a constant interchange of views between English and foreign lawyers, and above all, if a greater regard is had to the basic purposes which this part of the law is intended to serve. A *Quarterly Review* which is anxious to publish the views of lawyers, irrespective of their nationality, and which publishes up-to-date accounts of relevant events and documents, can do much to revive interest in a branch of law which is an eminently fertile field for that genius for sane development that has been so conspicuously and brilliantly effected by the English courts in their treatment of the general common law.

THE UNITED NATIONS CHARTER

Some Introductory Notes on its main Functions and Organs

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In a paper read to the International Law Conference held by the Grotius Society in April, 1944, whilst the Second Great War was still being waged, I tried to summarise the attempts which had already been made by the chief Allied Powers to lay down the framework of a world organisation for the preservation of peace and order in the international society of the future.[1] I then ventured to express the hope that the undue haste displayed in the drafting of the Covenant of the League of Nations in 1919 would not be repeated this time. The leading Allied statesmen had indeed already shown that they were duly mindful of the lessons of the past and of the great importance attaching to the framing of a constitutional instrument capable of ensuring the maintenance of peace and the supremacy of law and justice in the international sphere.

The attempt for the setting up of ' a system of general security ' which began with the signing of the Atlantic Charter by the two great English-speaking nations on August 12, 1941,[2] reached its conclusion at the San Francisco Conference on June 26, 1945, when the United Nations Charter was unanimously and without reservations approved by all the fifty States there represented.[3] At the same time, approval was given to the Statute of the International Court of Justice at The Hague and to the establishment of the Preparatory Commission in London, whose main duty was to prepare the business agenda of the various organs of the United Nations in anticipation of the forthcoming plenary Conference at San Francisco.

The extreme care devoted to the preparation of that Conference is best illustrated by the gradual steps which led up to it. Following

[1] *Proceedings of the International Law Conference* held at the Royal Society, Burlington House, London, 1944, pp. 83–95.

[2] Parl. Papers, United States, No. 3 (Cmd. 6321).

[3] *Documents of the United Nations Conference on International Organisation*, San Francisco, 1945, 15 volumes (referred to as ' S.F. Docs.'). See also a *Commentary* on the Charter of the United Nations, Parl. Papers, Misc. No. 9 (1945) (Cmd. 6666).

the Joint Declaration signed at Washington by the United Nations on January 1, 1942, to act together in pursuance of the common programme embodied in the Atlantic Charter[4]; the Four Nations Declaration concluded at Moscow on October 30, 1943, which 'recognised the necessity of establishing a general international organisation, based on the principle of the sovereign equality of all peace-loving States'[5]; and the two Declarations signed at Teheran on December 1, 1943, under which Great Britain, the United States and the Soviet Union undertook to make a peace which would 'banish the scourge and terror of war for many generations',[6] the Foreign Office representatives of the four Great Powers (Great Britain, the United States, the Soviet Union and China) met at Dumbarton Oaks, near Washington, in August, 1944, for the purpose of drafting a World Peace Organisation. The 'tentative proposals' which they produced, after six weeks' work, laid down 'the range of subjects on which agreement had been reached at the conversations'.[7] Many of these proposals were inspired by the Covenant of the League of Nations, but a new Security Council was devised with stronger powers to keep the peace. An Economic and Social Council was further added to assist the General Assembly on a wide variety of subjects, some of which had never been envisaged in the Covenant of the League of Nations.

In February, 1945, Great Britain, the United States and the Soviet Union met at Yalta, in the Crimea, and agreed on a 'voting formula' for the Security Council,[8] a question which was destined to prove of the greatest possible difficulty later on. This 'Yalta formula', together with the Dumbarton Oaks proposals, provided a working basis for the International Conference which met at San Francisco on April 25, 1945. It was materially helped in its deliberations by the numerous amendments and recommendations prepared by almost all the United Nations during the six months that had elapsed between the Dumbarton Oaks proposals and the opening of the Conference.[9] The delegates of the fifty States were thus able to reach a common agreement on the 'Charter of the United Nations' after sixty-three days of work. The term itself of 'United Nations' was adopted on the suggestion of the late President Roosevelt in the hope that the collaboration amongst all the Allied States which had proved essential to the victorious end

[4] Treaty Series, No. 5 (1942) (Cmd. 6388).
[5] Foreign Office News Dept., November 1, 1943, No. 14.
[6] *Bulletin of International News*, vol. 20 (1943), No. 25.
[7] *Dumbarton Oaks Conversations on World Organisation*, Misc. No. 4 (1944) (Cmd. 6560) and *Commentary* (Cmd. 6571).
[8] Parl. Papers (Cmd. 6598). See also *infra*, pp. 26–27.
[9] Approximately 5,000 documents were submitted to the Conference for its consideration.

of the war, would be perpetuated in time of peace. The same idea underlies the statement issued by the British Commonwealth meeting in London, preliminary to the San Francisco Conference: 'we are convinced that only the maintenance after the war of the close co-operation between the United Nations which has brought and is bringing success to their arms can prevent the recurrence of strife between the Governments and peoples of the world'.[1]

When the Dumbarton Oaks proposals are compared with the Charter which eventually emerged from the San Francisco Conference, it becomes clear that many additions and modifications were made to the original text. The most important addition, from an international jurist's view, is in Chapter I, article (1), where it is stated that 'the purposes' of the United Nations include the bringing about by peaceful means, and 'in conformity with the principles of justice and international law, that adjustment or settlement of international disputes or situations which might lead to a breach of the peace'. The emphasis in this paragraph should be placed on 'justice and international law'.

The San Francisco Conference also dealt with a subject which had not been included in the Dumbarton Oaks proposals, that of the International Trusteeship system for the general advancement of dependent territories and their progressive development towards self-government or independence, and for the encouragement of the respect for 'human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. The Conference further succeeded in clarifying and enlarging the functions of the Economic and Social Council so as to embrace within its purview all kinds of social and economic progress and development, including higher standards of living, full employment and health.

The Charter begins with one great advantage over the old League of Nations, as it includes all the States in the world which command real and effective power. Moreover, the obligation resting on its members to refrain from war is absolute, as compared with the Covenant which recognised the possibility of members of the League resorting to war without a breach of the Covenant. The predominant aim of the new organisation is, in fact, 'the maintenance of international peace and security'. This phrase is used in the Charter no less than thirty-two times.

By article 2 of the Charter all members of the United Nations accept the obligation:—(1) to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; (2) to refrain, in their

[1] Statement released by the Dominions Office on April 13, 1945.

international relations, from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations. These two obligations substantially reproduce the provisions of the Pact of Paris (Briand-Kellogg Pact) of 1928, but with the important addition of the use of sanctions in preserving peace. The Charter thus operates in two ways: by preventing aggression before it occurs; by opposing and defeating aggression if it has already taken place. Its powers include the right to call upon its members to contribute their sea, land and air forces 'as may be necessary to maintain or restore international peace and security' (article 42).

ORGANS OF THE UNITED NATIONS

The three main organs of the United Nations—the General Assembly, the Security Council, and the International Court of Justice—correspond roughly to the constitutional division of powers so well known to Anglo-American jurists: legislative, executive and judicial. But the analogy is still far from perfect, and it is submitted that it is only through the complete realisation of these three functions that a properly organised International Society can function effectively in future.

General Assembly.

The General Assembly, which consists of all the members of the United Nations, is empowered to discuss any question relating to the maintenance of peace. In this respect it constitutes a forum for open and public discussion where practically any question of international importance may be put on its agenda. It may also recommend measures for the peaceful settlement of any situation, regardless of origin, which seems likely to impair the general welfare or the friendly relations among nations (article 14). It may not, however, make recommendations concerning any dispute which is being dealt with by the Security Council, though it may discuss it (article 12). Neither can it take any action with regard to any dispute which arises, which must be left in the hands of the Security Council (article 11, § 2). It has, however, the control of the purse as it alone approves the budget and apportions the expenses of the organisation. It also supervises the finances of the 'specialised agencies',[2] elects and supervises both the Economic and Social Council and the Trusteeship Council and shares with the Security Council the task of electing the judges of the International Court of Justice.

[2] Such specialised agencies clearly include the International Labour Organisation and the Food and Agriculture Organisation (article 57 of the Charter). See also *infra*, p. 31.

The functions of the General Assembly are, therefore, mainly deliberative. Whilst this accords with the plan of confining executive power to the Security Council, the General Assembly should at least have been given wider powers for the revision of treaties which are no longer applicable and for the adjustment of obsolete conditions in the international sphere of the future. It could also serve as a useful co-ordinating body for the regulation of matters of international concern such as shipping, aviation, trade and communications.

A welcome feature of the General Assembly is that its decisions are taken by a majority vote, *viz.*, by a two-thirds majority for important questions, as defined in article 18 of the Charter, and by a simple majority for all other questions, as compared with the League Assembly, which could only deliberate by a unanimous vote. A further important new function conferred on the General Assembly is the right to 'initiate studies and make recommendations' for the purpose of 'encouraging the progressive development of international law and its codification'. This should prove of great advantage in the formulation of the main principles of international law and in gradually filling up the existing lack of an international code.

The experience of the first session of the General Assembly held in New York on October 23, 1946, makes it only too clear that some delegates were using the Assembly as a sounding board for propaganda speeches rather than as a constructive body for international co-operation. Nevertheless, it succeeded in winding up its work on December 16, 1946, in a greater spirit of harmony and goodwill than the earlier debates seemed to warrant. One of its major achievements was the unanimous adoption of the Disarmament Resolution, which recognised the fact that an efficient system of verification and control of armaments must form an essential part of the disarmament plan. That Resolution asked the Security Council to draw up a scheme 'for the general reduction and regulation of armaments'; to prohibit the use of the atomic bomb and all other weapons of mass destruction; to organise the international control of atomic energy 'for peace'; to organise impartial international inspection of armaments; to expedite the formation of its security forces; to note the pledge of members of the General Assembly to undertake 'a progressive and balanced reduction of armed forces'.[3] This comprehensive programme still remains to

[3] See President Truman's 'First Annual Report to Congress on the activities of the United Nations, and the participation of the United States therein', U.S. Publications, February 5, 1947; and 'United Nations, Proceedings of the General Assembly' (with annexes), H.M. Stationery Office, 1947.

be implemented in its major particulars.[4] But it is at least a satisfactory beginning in putting into effect one of the main tasks conferred on the General Assembly by article 11 of the Charter.

The Assembly was also successful in setting up the Trusteeship Council in the elaboration of which the British delegation took a prominent part.

Security Council

The Security Council—a body of eleven members, of whom five are permanent and six elected—is invested with greater powers than any other organ of the United Nations, and purposely so. In its executive functions it is supreme. So is the coercive power it enjoys for the prevention and suppression of aggression in the international field. Its right to initiate action in this respect is exclusive and begins as soon as a breach of peace has occurred or is threatened, and the obligation resting on all members of the United Nations to carry out its instructions arises immediately and fully. This obligation includes the engagement for the members to allow the armed forces of the United Nations to cross through their territories and also the obligation to hold at the disposal of the Security Council certain specified forces of their own. The Charter further envisages the setting up of special regional arrangements and agencies for the maintenance of peace and security. No regional group, however, may take enforcement action without the authority of the Security Council. Moreover, all such arrangements, in order to be valid, must be consistent with the Charter (articles 52, 53 and 103).

It will thus be seen that the powers conferred by the Charter on the Security Council are much more specific and ample than those enjoyed by the old Council under the Covenant of the League of Nations, and if rightly used, appear sufficient to ensure the maintenance of peace. So much, however, of the usefulness of the Security Council depends on the voting rights of the great Powers. That question was one of the most disputed issues at the San Francisco Conference and the compromise arrived at is neither satisfactory nor sufficiently definite.

Specific questions regarding the voting procedure in the Security Council were submitted by a sub-committee of the Conference Committee [5] to the delegations of the four Governments sponsoring the Conference—the United States, Great Britain, Soviet Russia and China. In dealing with these questions the four delegations issued

[4] Partly implemented by the Resolution passed by the Security Council on February 13, 1947, adopting a programme of work on atomic energy, general disarmament and security.

[5] 'Committee on Structure and Procedures of the Security Council.'

a considered statement which is of great importance as showing the general attitude of the four Powers towards the whole question of unanimity of the permanent members in the decisions of the Security Council.[6]

The Statement begins with the recognition of the fact that the Security Council, in discharging its responsibilities for the maintenance of international peace and security, will have two broad groups of functions. Under Chapter VII of the Charter, the Council will have to make decisions which involve its taking direct measures in connection with the settlement of disputes, the adjustment of situations likely to lead to disputes, the determination of threats to peace, the removal of threats to the peace, and the suppression of breaches of the peace. It will also have to make decisions which do not involve the taking of any such measures. The ' Yalta formula ' provides that the second of these two groups of decisions will be governed by a procedural vote, that is, the vote of any seven members. The first group of decisions will be governed by a qualified vote, that is, the vote of seven members, including the concurring votes of the five permament members,[7] subject to the proviso that in decisions under Chapter VI (Pacific Settlement of Disputes) and under article 52 (§ 3) (Pacific Settlement of Local Disputes Through Regional Arrangements or Agencies), parties to a dispute shall abstain from voting. This abstention is based on the principle that no State shall be a judge and a party in its own cause. Further, no individual member of the Council can alone prevent consideration and discussion by the Council of a dispute or situation brought to its attention. Nor can parties to such dispute be prevented by these means from being heard by the Council. Likewise, the requirement for unanimity of the permanent members cannot prevent any member of the Council from reminding the members of the Organisation of their general obligations assumed under the Charter as regards the peaceful settlement of international disputes. Beyond this point, decisions and actions by the Security Council may well have major political consequences and may even initiate a chain of events which might in the end, require the Council under its responsibilities to invoke measures of enforcement. This chain of events begins when the Council decides to make an investigation, or determines that the time has come to call upon States to settle their differences, or makes recommendations to the parties. It is to such decisions and actions that the unanimity of

[6] ' Statement by the delegations of the four sponsoring Governments on voting procedure in the Security Council,' S.F.Docs. 852, Vol. 10, 111/1/37 (1), June 7, 1945.

[7] With the addition of France to the four sponsoring Powers.

the permanent members applies with the important proviso, referred to above, for the abstention from voting by the parties to a dispute.

In the result, the 'Yalta voting formula' substitutes for the rule of complete unanimity which was embodied in the Covenant of the League of Nations in favour of the League Council, a system of qualified majority voting in the Security Council. Under this system, non-permanent members of the Security Council individually would have no 'veto'. Moreover, the formula adopted for the taking of action in the Security Council by a majority of seven would make the operation of the Council less subject to obstruction than was the case under the League of Nations rule of complete unanimity. It must also be noted that under the 'Yalta formula' the five major Powers could not act by themselves since even under the unanimity requirement, any decisions of the Council would have to include the concurring votes of at least two of the non-permanent members. In other words, it would be possible for five non-permanent members, voting as a group, to exercise a 'veto'. It is not to be assumed, however, as the statement alleges, that the permanent members, any more than the non-permanent members, would use their 'veto' power wilfully to obstruct the operation of the Council.

The Statement ends with the view of the four sponsoring Powers that it 'will be unlikely that there will arise in the future any matters of great importance on which a decision will have to be made as to whether a procedural vote would apply. Should, however, such a matter arise, the decision regarding the preliminary question as to whether or not such a matter is procedural must be taken by a vote of seven members of the Security Council, including the concurring votes of the permanent members'.

Much of the difficulty in the Security Council will undoubtedly arise in future from a lack of certainty as to what are procedural votes, not requiring the concurrence of the five permanent members and what are substantive matters. One solution out of this difficulty may consist in the Security Council compiling as complete a list of procedural matters as may be found possible. There is also the possibility that a permanent member might abstain from voting upon a matter, but without vetoing it. Such an instance occurred recently [8] when the Security Council adopted by ten votes to none, the Soviet Union abstaining, a programme of work on atomic energy, general disarmament and security, intended to implement the resolution passed by the General Assembly on December 14, 1946.[9]

[8] February 13, 1947—*Proceedings of the Security Council.*
[9] See *supra*, p. 24.

It should be observed that the text of the 'Yalta formula' was drafted on the basis of the text of the Dumbarton Oaks Proposals in which the term 'situation' did not appear in connection with the specific function of the Council relative to pacific settlement (Chapter VIII, Section A). At San Francisco this section of the Dumbarton Oaks Proposals was extensively revised while the text of the 'Yalta formula' remained untouched. Among the many modifications made in this section was the insertion of the term 'or of a situation of like nature' in paragraph 5 of that section. The Summary Report of the Twelfth Meeting of Committee III/2 reveals that the words 'or of a situation of like nature' were intended to give effect to the Australian amendment which proposed that the Security Council should be permitted to deal with both a dispute or a situation the continuance of which was likely to endanger the peace. On the other hand, the terms of article 36, read with article 33, indicate that the action contemplated is not based upon a prior determination whether a matter is a dispute or a situation, but upon whether the matter brought before the Council is of such a nature that its continuance is likely to endanger the maintenance of international peace and security. It is clear that article 36 makes no distinction between disputes and situations in so far as the function of the Council in making recommendations is concerned. To make such a question depend on the veto power of a permanent member appears inconsistent with the clear intention of the 'Yalta formula' and suppresses the distinction between voting procedures applicable to pacific settlement and voting procedures applicable to enforcement action. It is also opposed to the statement issued by the sponsoring Governments that the veto power of the permanent members would be used in moderation. Indeed many of the smaller States expressed their willingness to accept the interpretation of the 'Yalta formula' given by the sponsoring Governments on the understanding that the veto power would not be used to render the Council impotent by obstructing the normal exercise of its functions.[1]

The veto provision thus reveals a serious defect in the Charter which so long as it remains unmodified, must prove an obstacle to the effective working of the international organisation. More particularly, the application of the military provisions on sanctions may be blocked by a single vote of any one of the five Great Powers. The paradoxical situation may then arise that whilst the United Nations could in all probability reach an agreement in suppressing

[1] See also Report of Mr. Stettinius (then Secretary of State) to the President of the U.S. on the results of the San Francisco Conference (Dept. of State Publications, 2349).

small wars, they would be unable to take any action where the Great Powers are in disagreement and the real danger of a world war arises.

International Court of Justice

The Court, unlike the Permanent Court of International Justice, forms part of the new international organisation and is destined to play an important part in the settlement of legal disputes as the principal judicial organ of the United Nations. It is confidently expected that it will also be in a position to assist in the development of case law through a progressive series of judicial decisions.

The discussions at the San Francisco Conference regarding the constitution of the court were chiefly directed to the question whether the Permanent Court of International Justice should be made an organ of the United Nations or whether a new court should be established. The majority of the Committee (Commission IV—Judicial Organisation) finally decided that a new court should be created.[2] The claim of continuity with the past was not, however, broken, since the statute of the new court is based on that of the old court (article 92 of the Charter).

A second vital question which occupied the attention of the Committee was, whether the jurisdiction of the International Court should be made obligatory in all legal disputes. The majority of the members of the Committee were in favour of compulsory jurisdiction, but realised that their insistence on this point might prejudice the possibility of obtaining a general acceptance of the statute of the court by all the United Nations.

It was thus decided by a majority to retain the 'optional clause' set out in article 36 of the court's statute under which the member States 'may at any time declare that they recognise as compulsory *ipso facto* and without special agreement' the jurisdiction of the court in all legal disputes concerning the (a) interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation. In addition, the court will have jurisdiction to decide all disputes referred to it by virtue of a particular convention or treaty.

Article 36 of the Charter, already referred to, provides that the Security Council may, at any stage of a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, 'recommend appropriate procedures or methods

[2] S.F.Docs. IV/12 June 15, 1945, No. 1007, Vol. 13, p. 55.

of adjustment'. In making recommendations under this article, the Security Council is 'to take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court'. The words 'as a general rule' were adopted in substitution of the word 'normally' used in the Dumbarton Oaks proposals ('justifiable disputes should normally be referred to the International Court of Justice'—VIII (A) 6). But it cannot be said that the change constitutes an improvement. Not only is the expression 'general rule' incapable of exact definition, but it is opposed to the elementary principle of legal drafting which requires that when a 'general rule' is laid down in a legal document, the exceptions to it (if any) should be stated in express terms. Had the term 'as a general rule' been omitted from article 36 of the Charter, all international disputes of a legal character—not otherwise adjusted—would automatically be referred to the International Court. This would have constituted an ideal solution and would have made the International Court a real Tribunal. The recommendation put forward at the San Francisco Conference by the Belgian Delegation comes as near as possible to this ideal: 'members of the organisation should recognise the obligatory jurisdiction of the court as regards any questions of law for which they have not made use of another method of peaceful settlement'.[3] A very similar proposal was put forward by the Australian delegation.[4] The following States also supported, on principle, the compulsory jurisdiction of the court:—Bolivia, Costa Rica, Cuba, Dominica, Ecuador, Guatemala, Iran, Norway, Paraguay, Peru, Philippine Islands, Uruguay and Venezuela.[5]

As regards the court's jurisdiction to deliver advisory opinions, article 96 provides that 'the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question'. There is, however, no obligation laid on either of these two bodies to do so.

The United Kingdom delegation suggested at San Francisco that a suitable provision should be inserted in the Charter enabling 'such other organs of the organisation and such specialised agencies brought into relationship with it, as may at any time be authorised thereto by the General Assembly, to request advisory opinions of the court on questions of a constitutional or judicial character arising within the scope of their activities'.[6] The British proposal

[3] S.F.Docs. Jurists 1, G. 1, April 4, 1945, Vol. 14, p. 417.
[4] *Ibid.*, G/14 (1), May 5, 1945, Vol. 3, Doc. 2.
[5] *Ibid.*, Vol. 3, G/14 (r); 7 (h), (g) (2); 14 (o); 7 (p); 7 (F); 14 (m); 7 (n) A 6; 7 (l); 14 (u); 14 (k); 7 (a) and 7 (d).
[6] *Ibid.*, IV/1/65—June 7, 1945, Vol. 12, No. 952.

found its way, slightly altered, into article 96 (2) of the Charter, and constitutes a welcome addition to the court's jurisdiction. Another welcome innovation is article 94 of the Charter, which enacts that ' each member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party ', and also empowers the Security Council ' to make recommendations or decide upon measures to be taken to give effect to the judgment, if any party fails to perform the obligations imposed upon it by the judgment '. In fairness to the scrupulous integrity of States in carrying out the decisions of International Courts, it must be added that there is no instance in which a party refused to carry out effect to a judgment given against it by the Permanent Court of International Justice during the eighteen years of its active existence (1921 to 1939).

ECONOMIC AND SOCIAL COUNCIL

The creation of this fourth organ of the United Nations bids fair to play an important part in the establishment of peace, prosperity and general welfare of mankind. As that veteran statesman, Field-Marshal Smuts, stated at San Francisco : ' the raising of the levels and standards of life and work for all peoples will remove social unrest and injustice and thus strike at the very roots of war '.[7] By article 56 of the Charter all members pledge themselves ' to take joint and separate action ' to promote the purposes of the Council which now include not only economic and social co-operation, but also ' universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion '—words which recall the great principles proclaimed by President Roosevelt and Mr. Winston Churchill in the Atlantic Charter. The proper operation of the provisions for economic and social co-operation must indeed rest on the principle that ' conditions of stability and well-being are necessary for the peaceful and friendly relations among nations '.

Article 57 which refers to ' specialised agencies ' brought into relationship with the United Nations is obviously intended to apply to such bodies as the International Labour Organisation, the International Bank, the International Monetary Fund, the Food and Agriculture Organisation and the many other inter-Governmental commissions on health, education and cultural international agreements which are becoming so common at present.

[7] S.F.Docs. P/19, No. 1209—Vol. 1, p. 678.

TRUSTEESHIP COUNCIL

This fifth organ of the United Nations was the last to be set up and is mainly the result of the approval of trusteeship agreements by the principal colonial Powers. The administration of these ' dependent ' territories is declared by the Charter to be ' a sacred trust ' for the promotion of the well-being and of the ' political, economic, social and educational advancement ' of their inhabitants whose interests are declared to be paramount. The drafting of these sections is mainly due to the lead taken by the United Kingdom and Australian delegations whose conclusions were accepted by all the members of the United Nations having colonial responsibilities.

The International Trusteeship system established by the Charter applies to three categories of territories : (a) those now held under mandate conferred by the League of Nations; (b) those which may be detached from enemy States as a result of the Second World War; and (c) those voluntarily placed under the system by their administering States. An interesting difference from the League Mandates is the twofold division of trust territories into ' strategic ' and ' non-strategic '. The first division will come under the direct supervision of the Security Council; whilst the second division is placed under the authority of the General Assembly, working through the Trusteeship Council.

THE SECRETARIAT

The Charter also provides for a Secretariat under the headship of a Secretary-General who is described as ' the chief administrative officer of the Organisation '. His functions are wider than those enjoyed by the Secretary-General of the League of Nations. He is notably given the right ' to bring to the attention ' of the Security Council ' any matter which in his opinion may threaten the maintenance of international peace and security '.

The Secretary-General is assisted by a staff whose exclusively international character is recognised by articles 100 and 101 of the Charter. The paramount aim in the selection of the staff is stated to be ' the securing of the highest standards of efficiency, competence and integrity ', but due regard must be paid to the importance of recruiting the staff ' on as wide a geographical basis as possible '. More detailed proposals regarding the staff were put forward at the Conference, but were not eventually approved.

In conclusion, it may be asserted that the Charter, viewed as a whole, provides a machinery which is capable of fulfilling its main object of preserving peace with justice ' in a democratic world of

free men '. It does not purport to answer all the questions or resolve all the problems. No constitution was ever devised which could, like an enchanted palace, ' spring into sight at once by magic touch or hidden power ', and which was not open to gradual improvement. But it can be claimed for the Charter that it sets a goal within the compass of the world's immediate needs, and that it is as perfect an instrument as the compromises which are at present unavoidable in the negotiations between so many States could make it.

On the other hand, the experience of the League of Nations makes it necessary that the new Charter should be treated without an exaggerated optimism, and with a full realisation that its success in the future will depend on the agreement of the great Powers which have the power and are willing to employ it for the purpose of maintaining peace, law and justice in the international relations of the future. Given that agreement, there is every reason to hope that the Charter could be gradually developed and improved so as to become the highest factor in the successful working of the United Nations Organisation. To this end, it is necessary that the three main organs of the United Nations should be given a full and effective scope within their respective constitutional functions, thus making it possible for the General Assembly to become the world's parliament, the Security Council, the world's executive government, and the International Court the world's tribunal, possessing compulsory jurisdiction for the settlement of all international disputes which fall within the realm of international law.

EDITORIAL NOTES

THE INTERNATIONAL COURT OF JUSTICE

THE Statute of the International Court of Justice, annexed to the Charter of the United Nations drawn up at the San Francisco Conference in 1945, is in broad essentials identical with its predecessor, the Statute of the Permanent Court of International Justice, as amended by the Protocol of September 14, 1929. Indeed, but for the necessary changes required to bring the Statute up to date (*e.g.*, ' League of Nations ' becomes ' United Nations ', etc.) the two texts are themselves in the main identical.

By virtue of chapter XIV of the Charter, the International Court of Justice is the principal judicial organ of the United Nations, all members of which are ipso facto parties to its statute, each one undertaking to comply with the court's decision in any case to which it is a party, though not by the Charter prevented ' from entrusting the solution of differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future ' (art. 95). The predecessor of the present court was not an organ of the League of Nations and had a Statute separate from the Covenant of the League.

The Statute of the International Court itself falls principally, like its predecessor, into four chapters : Organisation (arts. 2–33); Competence (arts. 34–38); Procedure (arts. 39–64); Advisory Opinions (arts. 65–68); while a fifth chapter (arts. 69–70) is new, and provides for amendment to the court's statute.[1]

One important difference between the new statute and the old is contained in article 13, dealing with the election, re-election and terms of service of the judges. Though judges are still elected for nine years and may be re-elected, article 13 provides for the retirement of five judges and their replacement every three years, by the simple expedient of requiring ' that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years ', the judges so to retire being chosen by lot to be drawn by the Secretary-General. This measure has found wide approval and will clearly be conducive to a periodic reinvigoration of the court at shorter intervals while safeguarding an ample continuity in its deliberations.

[1] Printed at p. 117, *infra*.

Article 10 (2) dealing with the election of judges by absolute majority of votes in the General Assembly and the Security Council makes the important provision that 'any vote of the Security Council' (in this connection) shall be taken without distinction between permanent and non-permanent members of the Security Council.

The provision in Article 21 of the old Statute that 'The duties of the Registrar of the court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration' is omitted from the new Statute.

An interesting new provision is made by article 30 that 'the rules of the court may provide for assessors to sit with the court or with any of its chambers, without the right to vote'.

The old Statute, in articles 26 and 27, required that labour cases ('particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other treaties of peace') and cases relating to transit and communications ('particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles') should be heard by special chambers of five judges appointed every three years by the court. The corresponding articles of the new Statute make the appointment of such chambers discretionary, require them when appointed to consist of three or more judges as the court may determine, instance labour, transit and communications cases as the particular categories for which such chambers may be appointed, and further provide (art. 26 (*n*)) that 'the court may at any time form a chamber for dealing with a particular case'.

Chapter II (Competence of the Court) shows little difference from its predecessor. Articles 34 and 35 are slightly narrower, inasmuch as they make the court open to 'States parties to the present Statute', whereas the earlier court was open 'to the members of the League and also to States mentioned in the Annex to the Covenant' of the League. The conditions, however, under which the court shall be open to other States than those parties to the Statute, remain similar.

An important innovation is made in paras. 2 and 3 of article 34 which provide that 'the court, subject to and in conformity with its rules, may request of public international organisations information relevant to cases before it, and shall receive such information presented by such organisations on their own initiative'; and that 'whenever the construction of the constituent instrument of a public international organisation or of an international convention adopted thereunder is in question in a case before the court, the registrar shall so notify the public international organisation

concerned and shall communicate to it copies of all the written proceedings '.

Article 37 is brought up to date. References to a treaty or convention due to be made formerly to the Permanent Court are, as between the parties to the Statute, to be referred to the new court.

The well-known article 38 lays down in four sub-paragraphs the law which the court is to apply. These are in identical terms with those of the earlier Statute, but the opening words of the main paragraph contain the enlightened addition that the court's ' function is to decide in accordance with international law such disputes as are submitted to it '.

There is little to note in Chapter III (Procedure). A new third paragraph to article 42 provides that ' The agents, counsel and advocate of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties '. Dealing with written procedure, article 43 substitutes ' memorials ' and ' counter-memorials ' for ' Cases ' and ' Counter-Cases ' in defining what is to be communicated to the judges and parties, while an analogous verbal alteration of ' sentence ' to ' judgment ' appears in article 61. These newly chosen expressions are likely to find a wider acceptance.

As regards advisory opinions, an important extension to the court's jurisdiction is made by article 96 (2) of the Charter of the United Nations, which states that besides the General Assembly and the Security Council ' other organs of the United Nations, and specialised agencies which may at any time be so authorised by the General Assembly, may also request advisory opinions of the court on legal questions arising within the scope of their activities '.

Chapter V (Amendment) is new. It permits of amendment to the statute, on proposal by the Court, by the same procedure as is provided in the Charter of the United Nations for amendments to that Charter.

The General Assembly and the Security Council, voting independently, elected fifteen judges to serve on the International Court of Justice as follows [2] :—

Dr. Alejandro Alvarez (Chile);
Dr. J. Azevado (Brazil);
3—Dr. Abdel Hamid Badawr Pasha (Egypt);
Professor Jules Basdevant (France);
6—Nic. I. Fabela Alfaró (Mexico);
Dr. J. G. Guerrero (El Salvador);
6—The Hon. G. H. Hackworth (U.S.A.);

[2] The figure 3 or 6 against a name indicates that the judge is due to retire, according to the statute, in three or six years as the case may be.

3—Dr. M. Hsu (China);
6—Dr. H. Klaestad (Norway);
6—Professor S. B. Krylov (U.S.S.R.);
Sir Arnold D. McNair (U.K.);
3—Mr. J. E. Read (Canada);
6—Dr. Charles de Visscher (Belgium);
3—Dr. Bogdan Winiarski (Poland);
3—Dr. M. Zoričič (Yugoslavia).

The Registrar of the Court is Dr. Edward Hambro.

The court was formally opened on April 18, 1946, having elected as its President Dr. José Gustavo Guerrero, of El Salvador. It has evolved its rules of procedure and chosen the secretariat of the court. No cases have yet been submitted to the court.

While it was drawing up its rules of procedure, the court found it necessary to request an interpretation from the Security Council. By letter dated May 1, 1946, addressed to the Secretary-General of the United Nations, the President of the Court brought the attention of the Council to article 35 (2) of the Statute, which specifies that ' the conditions under which the court shall be open to other States (*i.e.*, not parties to the Statute) shall be regulated by the Security Council '.

The President requested that the court be informed of any decisions the Council sees fit to take in the matter of access to the court by States not parties to the Statute. The Council referred this letter to its Committee of Experts, and instructed the Committee to prepare a proposal for the Council.

The Committee of Experts of the Security Council decided by a majority to recommend that all States, including those not members of the United Nations, be freely admitted to the jurisdiction of the court.

This proposal was, in principle, accepted by the Security Council, which adopted a resolution laying down the conditions under which the World Court will be open to States not members of the United Nations. The Soviet delegate voted for the resolution, but also supported a proposal put forward later by the Polish delegate to exclude Spain from its application. The United States and Britain opposed this, the British delegate stating that his Government regarded the International Court as a judicial body that could not be placed on the same basis as political organs of the United Nations so far as the treatment of Spain was concerned. Moreover, the practical effect of preventing Spain from submitting disputes to the court might be to put other nations, rather than Spain, at a disadvantage. The British Government saw no objection to opening the court to all nations on a basis of equality.

A NEW CODIFICATION OF INTERNATIONAL LAW

In an important paper[3] read before the Grotius Society on October 16, 1946, Sir Cecil Hurst, the President of the Society, made 'A Plea for the Codification of International Law on New Lines'. Sir Cecil began by outlining the attempts at codification made between the wars which culminated in the Codification Conference held at The Hague in 1930. He analysed the reasons for the failure of these attempts, and, on the basis of that analysis, submitted three propositions which, in his view, constitute the conditions which must be fulfilled if any further attempt at codification is to succeed: '(1) the work that requires to be done (the ascertainment and the formulation in broad outline of the rules and principles of international law) cannot be done by Governments or by delegates working under Government instructions; (2) it cannot be done on a purely individual basis. It cannot be the work of one man alone. A document with no more than the "imprimatur" or the authority of one man behind it will never in these days carry the weight which it must have if it is to meet with general acceptance as a statement in broad outline of the rules of international law whose observance is binding on all States; and (3) to be successful the work must be undertaken on both a national and an international basis'.

One passage from Sir Cecil's paper may be quoted here in explanation of the first submission: 'To any student of international affairs it is obvious that so far as public opinion is allowed to count in the government of a country, the attitude of the delegate of that country at an international conference must pay regard to the needs, the feelings and the wishes of his fellow countrymen. Now international law does not alter in accordance with the aspirations of the inhabitants of any particular country. It is a branch of legal science whose canons cannot be rewritten from day to day in accordance with any standards so shifting and so variable. It is, I think, for this reason that from the moment that the Conference of 1930 decided to direct its efforts to the conclusion of conventions embodying the rules which would be acceptable to the parties instead of to the ascertainment of existing law, there was no chance of any successful issue to its labours. The needs of the various States were too often in opposition for it to be possible to find a satisfactory compromise'. . . . 'To show you what I mean let me remind you of the much debated question whether a State can in any circumstances be made responsible internationally for damage

[3] The full text of this paper will appear in Volume 32 (1947) of the *Transactions of the Grotius Society*.

suffered by an alien if it accords to that alien treatment as good as that given to its own citizens. It is a point on which there has not infrequently been controversy between the Government at Washington and the Governments of Latin-American States. Suppose that at the Codification Conference in 1930 a convention had been concluded in conformity with the views prevalent in Latin America. Would that Convention have had an easy passage when submitted to the Senate of the United States for ratification?'

Coming to his third submission, Sir Cecil developed the argument that international law cannot safely be left to develop as the common law developed, though there are many who oppose attempts at its codification because of what Sir Cecil characterised —he hoped not unfairly—as 'the strangling theory'. There was not a sufficient stream of judicial decisions emanating from the International Court at The Hague to build up an adequate system of international law in a way similar to that in which the common law was built up in its earlier and formative days. Moreover, judicial decisions cannot in any circumstances be the sole source of international law. On the Continent they are not regarded even as a primary source, and in article 38 of the Statute of The Hague Court they figure low in the list of sources to which the court must look for the law it applies. Of paramount importance as a source of international law, submitted Sir Cecil, is the practice of States, whether manifested by the treaties they conclude or by their conduct. However, 'before the importance from the point of view of building up the science of international law of a Government's conduct on some particular occasion can be appreciated, that conduct has to be viewed and studied in the light of all the surrounding circumstances—why the Government acted as it did; what was the reaction of other Governments and so forth. The result is that the gradual evolution of international law is and must be a more complicated process than was the development of the common law in the Anglo-Saxon countries'. It followed 'that no satisfactory formulation in broad outline of the rules and principles of international law can be achieved without a combination of national and of international effort. The lines on which that effort ought to proceed are in my view that in every country some small body of men devoted to the study and advancement of international law should take this work in hand, working if possible to a plan which would have been drawn up and agreed on by some central international scientific organisation', which 'would set up machinery for the joint study and co-ordination of the contributions emanating from all the national groups'. Finally, Sir Cecil mentioned the difficulties inherent in such a task and referred to the

duty imposed by article 13 of the Charter of the United Nations on the General Assembly of encouraging the progressive development of international law and its codification. He concluded : ' If the Organisation will only be guided by the lessons of the past and will avoid the errors into which the League of Nations was led by its attempts to achieve the codification of international law through governmental action, it may well be able to build up the system of law and justice on which the new world order must rest '.

Note.—Sub-committee 1 of the Assembly's Legal Committee has recently passed a resolution that the General Assembly be asked to establish a Committee of Experts, nominated by the Governments particularly representative of the legal systems of the world, to study the most practical methods of encouraging the progressive development of international law. The resolution was unanimously approved by the Legal Committee, and adopted by the General Assembly on December 11, 1946, when it established a seventeen-member committee which was appointed to study (1) methods by which the Assembly can encourage the progressive development and eventual codification of international law; (2) steps for securing the co-operation of several organs of the United Nations towards this end; (3) methods of enlisting the assistance of appropriate international and national bodies. A report will then be made by the committee to the General Assembly at its next session.

In this country a committee has already been set up by the International Law Association on the ' Development and Formulation of International Law ' and its report will be discussed at the conference of the Association at Prague in September next. The committee is presided over by Sir Arnold McNair, with Dr. C. John Colombos as convener or ' rapporteur ', and includes amongst its members some of the leading British international jurists.

INTERNATIONAL LAW ASSOCIATION CONFERENCE, 1946

The 41st Conference of the International Law Association, the first since the recent war, was held at Cambridge, England, from August 19 to 24, 1946, and was attended by some 300 members, representing, besides headquarters, a dozen branches. The conference was welcomed by the Mayor of Cambridge, Lady Bragg, and by Professor H. A. Hollond on behalf of the Vice-Chancellor of the University and as Chairman of the Faculty Board of Law. The members were invited to an evening reception by the Master and Fellows of Trinity College.

The Right Hon. Lord Porter, Lord of Appeal in Ordinary, and president of the Association, presided over the conference with the assistance of the outgoing president, Dr. J. A. van Hamel, and of the following vice-presidents : Judge Algot Bagge, Professor A. L. Goodhart, K.C., Sir Lynden Macassey, K.C., Professor A. de G. de La Pradelle, and Mr. R. E. L. Vaughan Williams, K.C.

Mr. Trygve Lie, Secretary-General of the United Nations, was elected an Honorary Vice-President of the Association.

General satisfaction was felt by those present that it had been possible to convene so representative a gathering so soon after the termination of hostilities. Because of the short time available, it was impossible to follow the usual procedure of the Association, which entails detailed consideration by committees of the subjects to be discussed.

The main topics of discussion at the conference were the following :—

'The present structure of the United Nations Charter and the direction of desirable changes', by Professor de La Pradelle (France) and the Hon. William S. Culbertson (U.S.A.);

'Divorce jurisdiction and the mutual recognition of decrees,' by Mr. William Latey (England);

'Trade Marks,' by Mr. Robert Burrell, K.C. (England);

'The effect of the United Nations Charter on the development of International Law, with special reference to the status of Neutrality and The Hague and Geneva Conventions,' by Mr. C. G. Dehn (England);

'Uniform legislation in the field of commerce,' by Judge Bagge (Sweden) and Sir Lynden Macassey, K.C. (England);

'The conflict of laws concerning the formation of contracts,' by Professor D. J. Offerhaus (Netherlands);

'Methods of curbing the aggressive spirit,' by Dr. J. A. van Hamel (Netherlands) and Prof. A. L. Goodhart, K.C. (U.S.A.);

'International trusteeship,' by Professor Paul Coppens (Belgium).

Mr. Arthur Jaffé and Mr. W. Harvey Moore, joint honorary secretaries, and Mr. R. Y. Jennings, Fellow of Jesus College, Cambridge, as local honorary secretary, were in charge of the arrangements for the conference.

Among a number of resolutions passed were those expressing fullest support of the United Nations and of their Educational, Scientific and Cultural Organisation. The conference was characterised by a determination to increase the contribution of the Association to the strengthening and development of the rule

of law in international relations. The official report of the conference will be available in published form.

The next conference of the Association will be held at Prague from September 1 to 6, 1947, when the following subjects will be discussed :—

(1) The formulation and development of International Law;
(2) A Bill of Human Rights;
(3) Conflict of laws in reference to jurisdiction in sale of goods claims;
(4) Divorce jurisdiction and the mutual recognition of decrees.

It is also expected that the conference will have before it for discussion the report of the committee which has been considering amendments to the constitution of the Association and its future policy.

THE UNITED NATIONS WAR CRIMES COMMISSION

Over 24,000 persons in Europe have been tried for war crimes in British, United States, French, Greek, Norwegian, Czechoslovak and Polish courts (including, in respect of the two last named, persons on trial for collaboration and treachery), and of this number 1,432 have been sentenced to death, 16,413 to terms of imprisonment and 6,520 have been acquitted. 1,468 persons in the Far East have been tried before United States, United Kingdom and Australian courts, and of this number 457 have been sentenced to death, 735 to terms of imprisonment and 276 have been acquitted. These figures are taken from statistics available to the United Nations War Crimes Commission in early December, 1946, and are constantly increasing.

The United Nations War Crimes Commission was set up in October, 1943, at a meeting of the representatives of seventeen nations at the Foreign Office in London, though its intended formation had been announced a year previously by a simultaneous declaration of the British and United States Governments. Unfortunately the U.S.S.R. did not take part in the inaugural meeting and never joined the commission. The above figures do not include the Soviet Union or the Soviet zone in Germany for which data are not available.

Both Sir Cecil Hurst, the first President of the commission and Lord Wright, who succeeded him in that office, did most valuable work in a task demanding overwhelming labour, ability and tact. The original intention was that the commission should ' investigate and record the evidence of war crimes ' and ' report to the Governments

concerned', but the further task was added of 'advising the Governments concerned upon matters of a technical nature, such as the sort of tribunals to be employed for the trial of war criminals, the law to be applied, the procedure to be adopted, and the rules of evidence to be followed' and 'to formulate recommendations for the guidance of Governments'. In carrying out the first-named function, the commission has examined more than 20,000 cases and completed forty-four lists of war criminals. Inclusion in the list results, if the person can be found, in his apprehension and surrender to the Government demanding his trial. The commission continues to lend all possible assistance at all stages.

The commission recommended in 1944 that the retributive action of the United Nations should not be restricted to technical war crimes, that is, violations of the laws and customs of war, particularly embodied in The Hague and Geneva Conventions, but should extend to the unprecedented crimes committed by the Nazi and other Axis Powers against both combatants and civilians in the occupied and Axis countries. This recommendation doubtless influenced the Four Power Agreement of August 8, 1945, establishing the International Military Tribunal and providing, inter alia, for the punishment of 'crimes against humanity'.

The view of those members of the commission who held that in the state of international law as it existed in 1939 the launching of an aggressive war was not only illegal but criminal, was eventually accepted by the Allied Governments, included in the Four Power Agreement, and upheld in the judgment of the Nuremberg Tribunal.

Recommendations were also made by the commission on the defence of 'Act of State' and on that of 'superior orders', which were eventually approved. The Charter of the International Military Tribunal provides that the official position of defendants, whether as heads of State, or as responsible officials in Government departments, and the fact of their acting in pursuance of an order of their Government or of a superior shall not free them from responsibility, although superior orders may be taken into consideration in mitigation of punishment.

The recommendation of the commission that special measures be taken against members of criminal organisations, such as the S.S. and Gestapo, was elaborated in the Charter of the Tribunal and implemented in the judgment at Nuremberg.

The draft peace treaties, considered at the Paris Conference, by their inclusion of the conceptions of 'crimes against peace' and 'crimes against humanity', implemented the recommendations of the commission as to the scope of the retributive action of the United Nations, while the proposal made by the commission just

before the San Francisco Conference that the Charter of the United Nations should embody provisions to the effect that any person in the service of any State who has violated any rule of international law forbidding the threat or use of force or any rule of warfare, especially the obligation to respect the generally recognised principles of humanity, should be held individually responsible for those acts and could be brought to trial, though not adopted at San Francisco in that form, has found expression in comparable provisions.

The commission has now started publishing law reports of all trials conducted by the Allied authorities, to which a summary of the proceedings and a legal commentary is added.

DOUBLE TAXATION RELIEF

Speaking in London on January 15 on the subject of 'Double Taxation',[4] Sir Cornelius J. Gregg, K.C.B., K.B.E., president of the Board of Inland Revenue, began by outlining briefly the history of measures aimed at relieving double taxation. It was during the Great War of 1914–1918 that the problem was first tackled seriously, and in 1916 a relief measure, operative within the British Empire, was adopted, whereby the United Kingdom accorded relief for Dominion tax up to one half of its own rate of tax on any income, whether arising in the U.K. or in the Dominion, which was liable to both Dominion and U.K. tax, leaving it to the other country involved to act accordingly. This measure was made permanent in 1920. Meanwhile the U.S.A. had introduced a unilateral credit system of tax relief, whereby tax paid abroad was deductible from tax payable within the U.S.A. by its nationals. The U.S.A. also took the lead in exempting from tax, on a reciprocal basis, foreign shipping in their ports. The U.K. followed suit, and in 1931 similar measures were adopted in respect of air transport.

The Treaty of Versailles gave the impetus to a large number of bilateral tax treaties in Central Europe. (It is interesting to note that Holland and Germany were the only European countries taxing, like the U.K., on total income; others taxed according to the source of any given income and the principle underlying the bilateral relief agreements was to allot specified sources of income to taxation within one or other country only.)

The League of Nations Fiscal Committee, reporting in 1923, formulated the principle of 'economic allegiance' ('a part of the total sum paid according to the ability of a person ought to reach

[4] Paper read to the Grotius Society on January 15, 1947. The full text will appear in Vol. XXXIII of the *Transactions of the Grotius Society*.

the competing authorities according to his economic interest under each authority') as the basic principle that should underlie double taxation relief, and found it to consist of two essential elements, residence or domicile, and origin.

Corporeal or real wealth could be taxable on the basis of origin; intangible wealth on that of residence or domicile. Suggestions were made for relief, in the more difficult case of one country charging the total tax, on one of the following bases :—

(a) credit system;

(b) pure residence system (economically advantageous, inasmuch as it would promote flow of capital towards the economically weaker countries);

(c) division of tax, resulting in a sharing of the relief by the country of residence and the country of origin;

(d) a system based on classification and assignment of sources.

System (b) found favour at first (interestingly enough Ireland was the only country where this principle held), but it was recognised as practically impossible to obtain complete acceptance of it internationally.

The work of the League Fiscal Committee continued. In 1928 a general meeting of Government Experts on Double Taxation and Fiscal Evasion prepared model bilateral conventions on tax matters, which proved of the greatest value in facilitating the negotiation of tax treaties. Many of these, however, contained improvements on the original models, and just prior to the outbreak of the recent war a sub-committee was appointed to bring the 1928 models up to date, taking into account the new trends and new problems that had meanwhile appeared in the fields of international trade and investment. The sub-committee met at The Hague in 1940, and the work of revision and codification was continued in Mexico City by two Regional Tax Conferences in 1940 and 1943. The tenth session of the League of Nations Fiscal Committee was held in London in March, 1946, and the report of its work is available in a League publication,[5] which reprints in parallel type the Mexico and London drafts of Model Bilateral Tax Conventions, divided under the following heads :—

1. Prevention of the Double Taxation of Income;
2. Prevention of the Double Taxation of Successions;
3. Reciprocal Administrative Assistance for the Assessment and Collection of Direct Taxes.

[5] *League of Nations.* Fiscal Committee. Report on the work of the Tenth Session of the Committee. Geneva, 1946. See also: 'Prevention of International Double Taxation and Fiscal Evasion. Two Decades of Progress', by M. B. Carroll, *League of Nations*, 1939.

Taking the London draft as the text of the main body of his address and dealing first with taxation of income, Sir Cornelius Gregg divided this subject into three parts, Trade, Investments, and Personal Income. He drew attention to the fine distinctions that frequently require to be made when the following points, for example, come under consideration: trading in a country is not trading with a country, and there can be no trade in the country without a 'permanent establishment' there; can an agent or broker be a 'permanent establishment'?; a commercial traveller cannot be a 'permanent establishment'; subsidiary companies are not taxable. The lecturer described the so-called 'arm's length' principle in determining the profits of a subsidiary or branch: 'compute as if the business were an independent enterprise conducted at arm's length'.

In general the credit system ((a) above) is recommended as the basis for relief for trade taxation, except for shipping and air transport. An important exception to the general rule that dividends are taxable by the country in which a company is resident is that no tax is payable in the country where the branch is resident on dividends paid by a branch to the parent company. With regard to personal income, the lecturer noted the following points amongst others; literary royalties are chargeable only by the country holding the recipient thereof. A provision of 'exceptional virtue' is that exchange professors up to two years and students abroad in receipt of maintenance allowances are not chargeable in the foreign country on income there received.

With regard to the taxation of capital (Death Duties) which subject formed the second part of the main body of Sir Cornelius' address, the Model convention advances domicile and site (situs) as the two basic principles. The convention for 'Reciprocal Administrative Assistance for the Assessment and Collection of Direct Taxes' contains one principle (Article V, sections 2 and 3) difficult to put into practice: 'In the case of a request for the enforcement of a tax, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the other contracting State and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes. The request shall be accompanied by such documents as are required by the laws of the applying State to establish that the taxes are definitely due'.

Finally, Sir Cornelius dealt in some detail with the treaties recently concluded by the U.K. with the U.S.A. and France respectively, showing—and these points were perhaps of particular interest to international lawyers—how conflicting legal principles of tax

administration in the respective countries had had to be reconciled. For example, tax in the U.S.A. is assessed on a nationality basis, and wherever the national may be, whereas residence is the British principle; for the U.S.A. a company formed under U.S. laws is a 'resident' company, the British principle is to locate a company's residence where its control centre is. Agreement on the taxation of dividends was a crucial point in the treaty; the general American principle is to tax at 40 per cent. the dividends received by shareholders, and to apply a withholding rate (initially it was 10 per cent.) on dividends payable abroad (except for contiguous countries. The U.S. desire for trade with Canada, for example, prompted a withholding rate of 5 per cent.). More recently the U.S. world withholding rate has been 30 per cent. (the rate for Canada 15 per cent., that for Sweden 10 per cent., as frozen by the original agreement between the two countries).

The U.K.–U.S.A. treaty fixes a withholding rate of 15 per cent. on dividends originating in the U.S.A. and payable in the U.K. (with the reduced rate of 5 per cent. on dividends from a subsidiary company in the U.S. to a parent company in the U.K.). Normal legal rules situate bearer certificates in the country of the company's residence; under the U.K.–U.S.A. treaty all are situated where the company is resident. (Differing rules of situs also became of importance in the negotiation of a U.K.–South Africa treaty.) Following on the treaties with the United States, agreements have been made for new arrangements with Canada, South Africa, Southern Rhodesia, Australia and New Zealand. One outstanding achievement of the treaty between the U.K. and France was the removal of the French tax formerly payable by parent companies in the U.K. having a branch in France, on the basis of the proportion to the whole business of the amount of business done in France. The question of a Convention with France covering the general field of income is on the agenda for the future.

As a matter of more general interest it should perhaps be noted that the Most Favoured Nation clause has no application to reciprocal taxation treaties.

THE INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE

An Inter-American Conference on Problems of War and Peace was held at Mexico City, from February 21 to March 8, 1945. It was convened by the Mexican Government in a note to the Republics of the American Continent which were members of the Pan-American Union and had co-operated in the war effort of the United Nations. In the result, all the States of the American Continent were

represented except Canada and Argentina. On March 28 the latter country notified the Pan-American Union that a decree had been issued on the previous day by which Argentina adhered to the Final Act of the Conference. The meeting has been accounted the most significant held by the American Republics since the first Pan-American Conference at Panama in 1826.

The Conference adopted measures establishing the security of the American Republics, in the so-called 'Act of Chapultepec', under the provisions of which not only will aggression against an American State by a non-American Power be regarded as an act of aggression against all the Republics, but any act of aggression of one American State against another will give rise to immediate action by the other American Republics to repel such aggression. Such action on the part of the American Republics was to be exercised in harmony with any procedure to be established for the maintenance of world peace.

The proposal of the Mexican delegation, adopted and designated by the Conference 'The Declaration of Mexico', re-affirmed the juridical equality of the American Republics, prohibiting any interference in the internal affairs of one State by another and asserting the inviolability of the territory of the American States.

The Conference placed under the jurisdiction of the Pan-American Union 'every matter that affects the effective functioning of the Inter-American system and the solidarity and general welfare of the American Republics', thus abolishing the former distinction between political and non-political functions.

ANTI-CARTEL LAW IN THE BRITISH ZONE OF GERMANY

Considerable interest attaches to the decartelisation or deconcentration law recently promulgated in the British Zone of Germany and aiming at the 'Prohibition of Excessive Concentration of German Economic Power'. The ordinance was prepared and issued in pursuance of article 12 of the Potsdam Declaration:— 'At the earliest practicable date the German economy shall be decentralised for the purpose of eliminating the present excessive concentrations of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements'. It is well known that such arrangements had acquired great strength in Germany between the wars and were used with considerable effect to injure the economies of other countries and in the preparation for and waging of war.

The ordinance takes effect immediately, with the fourfold objective, as stated in the preamble, (a) to prevent Germany from

endangering the safety of her neighbours and again constituting a threat to international peace; (b) to destroy Germany's economic potential to wage war; (c) to ensure that measures taken for Germany's reconstruction are consistent with peaceful and democratic purposes; (d) to lay the groundwork for building a healthy and democratic German economy.

Article I provides, in section 1, that 'Excessive concentrations of German economic power, whether within or without Germany and whatever their form or character, insofar as such concentrations or any part or activity thereof are subject to the jurisdiction of Military Government, are prohibited; their activities are declared illegal, and they shall be eliminated' unless they are exempt under Article III, being either (a) not repugnant to the purposes of this law or (b) required to further the declared objectives of Military Government. Under exemption (b) fall I. G. Farben-Industrie, Friedrich Krupp's, the coal industry and the iron and steel industry, which have already been taken under control. The Post, Railways and Public Utilities in the British Zone are also exempt.

Section 2 of Article I declares the following to be excessive concentrations of economic power within the purview of the ordinance: 'Cartels, combines, syndicates, trusts, associations or any other form of understanding or concerted undertaking between persons, which have the purpose or effect of restraining, or of fostering monopolistic control of, domestic or international trade or other economic activity, or of restricting access to domestic or international markets'. Section 3 requires 'all economic enterprises having their headquarters located in the British Zone and employing in Germany, on the effective date of this Ordinance, or thereafter, directly or indirectly, more than 10,000 persons' to be 'examined as prima facie constituting excessive concentrations of economic power', and to be 'dealt with in accordance with the provisions of this Ordinance', if in fact found to be such concentrations. Other enterprises or activities, not covered by sections 2 and 3, may, under section 4, if deemed objectionable, be determined to be an excessive concentration of economic power. Such determination is to be made with regard to:—

'1. The percentage of the total German production or other economic activity in the field in which the enterprise operates which is produced or controlled by such enterprise;

2. The asset value of the enterprise and its annual volume of business;

3. The number of persons directly or indirectly employed by the enterprise;

4. The character of the production and the nature of the activity of the enterprise;
5. The nature and extent of the participation of the enterprise in any contract, agreement, combination, practice, or other arrangement or relationship of a restrictive or monopolistic character, such as is referred to in paragraph 2 above, or which tends to create special privileges in the purchase or sale of materials, to restrict production or distribution, to fix prices, or to allocate business or sales territories, or which provides for the exclusive exchange of patents or technical information;
6. Any grouping of enterprises or activities of similar or dissimilar character or covering distinct stages of production.'

Article II prohibits German participation in international cartels :—

' Participation, directly, or indirectly, by any German person within the jurisdiction of Military Government in any cartel, combination, enterprise, activity, or relationship which has the purpose or the effect of restraining international trade or other international economic activity is hereby declared illegal and is prohibited. This provision shall not be construed, however, to prohibit ordinary agency agreements and transactions of purchase and sale which have not that purpose or effect '.

The net is thus spread very wide. The ' Definitions ' contained in Article V leave no doubt of the all-embracing nature of the prohibition aimed at :—

' (b) The terms " enterprise ", " activity " and " relationship " shall include every kind of economic, business or financial instrumentality, activity or person, whether in the form of a cartel, trust, combine, stock company, syndicate, concern, aggregate of firms or bodies, or otherwise, and whether related by agreement, combination, association or understanding.

(c) The expression " cartels, combines, syndicates, trusts, associations, or any other form of understanding or concerted undertaking between persons, which have the purpose or effect of restraining, or fostering monopolistic control of, domestic or international trade or other economic activity, or restricting access to domestic or international markets " shall include the following :—

1. The fixing of prices or the terms or conditions in the purchase or sale of any product or thing;
2. The exclusion of any person from any territorial market or field of business activity, the allocation of customers, or the fixing of sale or purchase quotas except insofar as

such arrangements are not designed to reduce competition and are merely bona fide marketing arrangements between a particular enterprise and its distributing agents with respect to its own products;

3. The allocation of distributors or the allocation of products among customers;
4. The boycott of, or discrimination against, any manufacturer, distributor, consumer, or other person for the purpose of eliminating or preventing competition;
5. The limitation of production or the fixing of production quotas;
6. The suppression of technology or invention, whether patented or unpatented;
7. The devising of any arrangement in connection with the exploitation of patents or other similar exclusive privileges so as to extend the monopoly or privilege to matters not contained in the authorised grant;

(d) The terms " ownership " and " control " shall include every kind of economic, business, or financial relationship which has the effect of establishing common or concerted action among two or more business units, whether in the form of majority or minority stock participation; direct or indirect power to vote shares; ownership of certificates or other evidence of indebtedness carrying management privileges; personal relationships such as common offices or directorships; contractual arrangements or agreements; or any other relationship having the like effect.'

Such is the general ambit of the decartelisation law in the British Zone. In announcing its promulgation on February 11, 1947, General Robertson said he understood that the U.S. Military Government would issue a similar law for the U.S. Zone. Efforts to conclude agreement on a quadripartite law applicable in all four zones of Germany will continue.

VALIDITY OF FOREIGN DIVORCE DECREES

An important pronouncement on the validity of foreign divorce decrees was made in the House of Commons on December 19, 1946, when Mr. Allighan asked the Attorney-General whether he was aware that British citizens who had married Americans in the United States and had been divorced in the United States courts might not re-marry in England, since the divorce was not recognised, although the other partner might contract a legal second marriage in the United States; and if he would introduce legislation to remedy this position.

Sir Frank Soskice (Solicitor-General) stated in a written reply :

'Generally speaking, a decree of divorce pronounced in a foreign country is recognised in our courts as valid if the parties are domiciled in that foreign country. Such a decree, therefore, pronounced in the United States dissolving a marriage between an American husband and a wife whose nationality of origin was British would ordinarily be recognised as valid and the wife would be free to re-marry. If, however, the husband was British and not domiciled in the United States, the decree would not be recognised, but if grounds for divorce existed there would be nothing to prevent him taking proceedings for divorce in this country. I regret that I cannot at present hold out any hope of legislation to alter this position'.

This question of the recognition by the courts of one country of the decrees in matrimonial causes pronounced by the courts of another country has always proved a matter of considerable difficulty. It is, indeed, a matter where 'conflicts of law' arise more frequently than on any other question of private international law. The judgments given by municipal courts are very often irreconcilable.

A solution to this problem has been recently found in Czechoslovakia, where a law was passed on October 3, 1946,[6] relative to the recognition within the sphere of Czechoslovak law of decisions given by foreign courts. The laws in force in Bohemia and Moravia, on the one hand, and in Slovakia on the other hand, which differed greatly from each other in their rules concerning recognition, have been consolidated by this Act. Moreover, a new solid basis has been given to the solution of several doubtful questions arising in connection with the recognition of such decisions.

On this point Dr. Emilian Ledrer, of Prague, writes :—

The chief problems which the continental doctrine of private international law has to resolve in regard to recognition may be briefly summarised as follows:

1. A decision in a matrimonial suit given abroad gives rise to the question whether and in how far it produces legal effects within the territory of another State. In this connection the problem has to be decided whether in the State whose court is seised of the recognition, *i.e.* where the question of recognition has arisen, the decision is to be incorporated as an integral part of its own legal system or whether the foreign decision possesses merely certain of the functions otherwise possessed by the decisions of courts in the State recognising. Without attempting a strict analysis, there is also the problem arising from the so-called vested-rights theory.

[6] Collection of Laws and Ordinances, No. 199.

2. More important appears a problem of a different kind. Matrimonial decisions also concern the status of the parties thereto, as for instance, whether the party divorced may contract a new marriage. It is only the 'force de la chose jugée', the *res judicata*, which produces its effects not only in relation to the parties thereto, but also in relation to third persons and the State authorities. The task the Legislature had to deal with was to establish a standing court or authority competent to pronounce upon foreign decisions finally and conclusively. Otherwise the question of recognition might be adjudicated upon by any court and any authority which might be seised incidentally of the case.

3. As to the scope of preliminary investigations prior to the granting of recognition, the following view may be advanced : The civil proceedings from which the matrimonial decision originated may be looked upon as a synthesis and conclusion of the action and the pleadings of the parties and of the court seised of the matter. The end towards which the suit is directed is the *res judicata* which, put shortly, merely means a final and decisive pronouncement on the initial claim and on the machinery of proceedings put into operation. In spite of the rights which become vested in the person by the operation of the foreign procedure, the result, *i.e.*, the foreign judgment, must necessarily be subject to a new machinery operative in the State recognising. In the course of proceedings concerning the recognition of a decision given abroad, the foreign judgment is split up into its pre-procedural elements. No synthesis takes place but only an analysis. Such an analysis may have been carried out by the Legislature, so that the examination goes back to the pre-procedural elements—the *révision au fond* of French law. Or the examination is merely a partial one. In the latter case, the examination is subject only to certain conditions whose fulfilment—from the legal standpoint of the State recognising—suffices for the recognition of the foreign decree. These conditions relate partly *ad litis decisionem*, partly *ad litis ordinationem*. In the first category, a special place is given to the question whether—under the rules of private international law in force in the State recognising—the proper law has been applied to the case. In the second category is included the question whether the foreign court had jurisdiction to determine the case.

The new Act now solves all these questions and also lays down the conditions under which a foreign decree may be recognised as valid and effective by the courts and competent authorities in Czechoslavakia.

E. L.

THE POLAR REGIONS AND INTERNATIONAL LAW

Since the close of hostilities and the lifting of the security black-out, the general public again enjoys access to information of a type formerly withheld regarding new developments in widely differing fields of activity. Among such must be counted recent happenings in the Arctic and Antarctic, and in the regions bordering thereon.

Early in the year it became known in London that the Soviet Government had, at a much earlier date, made a request to the Norwegian Government for military bases on Spitzbergen (Svalbard); that the United States had proposed to the Icelandic Government in the autumn of 1945 the negotiation of an agreement for the joint use by the U.S. and Iceland of military facilities in Iceland, which proposal had not been accepted by Iceland, which, however, accepted and ratified a year later a U.S. suggestion for an agreement giving limited rights to the U.S. to use Keflavik airfield.

At the time of writing, five missions or expeditions (British, U.S., Russian, Argentinian and Chilean) are reported active in the Antarctic. Further news will be eagerly awaited in all parts of the world as this new surge of man's enthusiasm to explore the uttermost limits of the globe on which he lives brings fresh discoveries and, maybe, great rewards. Whether uranium will be found is doubted, but at least there is whaling, and the interests of meteorology will be served.

Such activities and new discoveries may well bring new claims on the part of States to sovereign rights. Old claims may in turn be re-affirmed. ' What is the law? ' may well be a much asked question, and the answer to it the subject of much debate as the nations seek to order these last found regions of the world on a firm and lasting basis of international comity. Two legal concepts spring readily to the mind, the concept of the freedom of the seas and the concept of territorial sovereignty, the one generous and progressive, the other restrictive, inhibitory. How do these juridical concepts apply to the polar regions, for the most part a hybrid, neither sea nor land in the ordinary sense? For the strictly polar regions consist, in the north, of permanently frozen sea (in slow continual motion from the Bering Straits towards the Atlantic Ocean) and, in the south, of a land mass covered in the main with permanent ice. Between these polar regions, strictly so called, and the limits of the major continents there are areas of both land and sea, covered with firm ice throughout the winter, though, in the summer, this is sufficiently broken up by thaw to allow of navigation in several of the sea areas.

In considering the answer to the legal questions involved the suggestion is prompted that the concept of freedom of the seas should be made applicable to all such areas as are navigable for part at any rate of the year. But what of the other areas? Can they be subject to the territorial sovereignty of States in the usual way—even those areas which are not even ice-covered land, but merely permanently frozen sea, in one case in continual motion? Here, obviously, the solution is beset with considerable difficulties.

'Freedom of the seas', it might be said, derives more from the nature of the sea itself than from the nature of man, and that the seas (outside territorial waters) should be entirely free for all seems to be such a logical necessity as to require little or no explanation. 'Territorial sovereignty', on the other hand, is an expression connoting the whole complex of legal rights which a State exercises over the land (and the territorial waters and air-space) within its jurisdiction. How is it acquired? International lawyers have long recognised the following four methods: occupation, accession, cession, prescription, and of these, occupation has in practice been by far the commonest. Oppenheim (*International Law*, Vol. 1, 4th ed., p. 449), defines occupation as 'the act of appropriation by a State through which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another State'. Occupation must be 'effective' and not merely symbolic or fictitious.

How far can the doctrine of effective occupation be applied to the polar regions, to regions which are presumably incapable of permanent habitation in the ordinary sense (at least by settlers from more temperate climes)? Can any occupation, more than the merely fictitious, be claimed? And even if the doctrine of occupation can be applied to ice-covered land (at the South Pole), can it be so applied to frozen sea (at the North Pole), which moreover is not stationary? How are the areas over which sovereignty is claimed to be delimited? There exists, unfortunately, no complete unanimity of principle or practice to regulate these matters, though the solutions that have been adopted by States have provided a temporary *modus vivendi*.

To regularise sovereign claims in respect of the North Polar Regions, the 'sector' principle has been repeatedly invoked. As early as 1907, Senator Pascal Poirier, speaking at Ottawa in the Canadian Parliament, took a firm stand on this principle, declaring that in law the sovereignty over the ice regions of the north polar sea must be considered as belonging to those European and American States that bordered on the Arctic, and that Canada must consequently lay claim to all regions within the Canadian

sector. In 1909 Canada once more expressed this view, on the occasion of the U.S. North Pole expedition (Cook and Peary), as also at the time of the Danish expedition under Rasmussen, when Canada made express reservations regarding any occupation by third-party States of the islands lying to the north of her territory. In 1923 these views were upheld again by Canada when the U.S. *Shenandoah* was setting out for the North Pole. A few years later (April 15, 1926) Soviet Russia notified all States of a decree by which, in virtue of the 'sector' principle, she laid claim to all lands and islands lying in the Arctic north of her State territory and between the latter and the Pole. In 1935, article 8 of the Soviet Air Transport Law (August 7) mentioned a civilian air fleet specially allocated to the purpose of taking possession of the Arctic Regions belonging to the U.S.S.R. as well as the most northerly regions of the U.S.S.R. proper. Norway, on the other hand, appears to have fought a little shy of the 'sector' principle, or at least to have found it unnecessary, for the Svalbard Treaty of 1920 (signed by Great Britain, U.S.A., Denmark, France, Italy, Japan, Norway, the Netherlands and Sweden), recognised Norwegian sovereignty over Spitzbergen and Bear Island, reserving only certain hunting and fishing rights. In a note of February 16, 1924, the Soviet Government also recognised Norwegian sovereignty over Svalbard and Bear Island, and in 1935 adhered to the 1920 treaty without reservation.

The 'sector principle' did not, however, find government approval in the United States. Its views are reflected in the minute of the U.S. Navy Department, to the Secretary of State (Stimson), dated September 23, 1929, that the sector principle (*a*) 'Is an effort arbitrarily to divide up a large part of the world's area amongst several countries; (*b*) contains no justification for claiming sovereignty over large areas of the world's surface; (*c*) violates the long recognised custom of establishing sovereignty over territory by right of discovery; (*d*) is in effect a claim of sovereignty over high seas, which are universally recognised as free to all nations, and is a novel attempt to create artificially a closed sea and thereby infringes the rights of all nations to the free use of this area, and that therefore the Government should not enter into any such agreement as proposed'.[7]

In the South Polar Regions, an analogous sector principle, though not entirely similar to that applied in the Arctic, has been put into operation. The difference lies in this that the sectors do not, in the Antarctic, constitute triangles of which the side lines

[7] G. H. Hackworth, *Digest of International Law*; U.S. Government Printing Office, Washington, 1940.

converge on the Pole, and that in three cases at least (French, Norwegian and British territories) the sectors are not based on contiguous continental territory already held previously but on territories claimed by right of discovery or occupation, or both. French claims to Adélie Land are based ultimately on discovery of the land by Dumont d'Urville in 1840 (who, in fashion characteristic of his race, named it after his wife). A decree of November 21, 1924, placed the territory under the jurisdiction of the Colonial Government of Madagascar, together with St. Paul, Amsterdam, the Kerguelen Islands and Crozet Archipelago. A further decree of April 1, 1938, established the limits of the French Antarctic possessions designated as Adélie Land as 'the islands and territories situated to the south of the 60th parallel of south latitude and between the 136th and 142nd meridians of longitude east of Greenwich'. The U.S. Government, on receipt of this decree, advised the French Government that 'in the light of established principles of international law the U.S. Government cannot admit that sovereignty accrues from mere discovery'. Considerably earlier, in 1908, Great Britain invoked the sector principle in proclaiming by letters patent (re-affirmed in 1917) British sovereignty over the Falkland Dependencies (the Falkland Islands themselves having been originally ceded in 1771 by Spain to Britain, who occupied them permanently from 1833 onwards). In 1923 British sovereignty was proclaimed over the Ross sector, deriving from New Zealand, and the sector principle was invoked again in 1933, in right of Australia, to establish British sovereignty over Enderby Land, Kemp Land, Queen Mary Land, King George V Land and Oates Land. The Norwegian Government by Royal decree of January 14, 1939, placed under the sovereignty of Norway that part of the coast of the Antarctic continent which stretches from the boundary of the Falkland Islands Dependencies on the west (boundary of Coats Land), to the boundary of the Australian Antarctic Dependency on the east (longitude 45° east) with the territory situated within the said coast and with the adjacent waters. The Norwegian Ministry of Justice was authorised to take the necessary steps concerning the exercise of police authority in that region.

These examples show that, though not universally accepted, the sector principle and the contiguity theory, which stand out most clearly from the welter of conflicting ideas, have at least the merit of relative simplicity and for that reason, if for no other, may be commended.

New discoveries in the polar regions are unlikely of themselves to import any all-embracing modification into the present indistinct

legal position. It may be at some future date that the opening up of polar air routes on any large scale will necessitate a thorough regularisation of the law, though so long as sovereignty over territorial air-space continues to play the important part it at present plays in air law, such a regularisation might tend to confirm rather than modify the existing trends of international law as applied to the polar regions. Arrangements such as that providing for the reciprocal rights of free passage of their aircraft over their respective Antarctic territories, entered into by an exchange of notes in Paris on October 25, 1938, between the French Government and the Governments of the United Kingdom, the Commonwealth of Australia and New Zealand would then become more numerous.

E. H. Wall.

REVIEW OF CASES

JURISDICTION OF THE ADMIRALTY COURT IN ENGLAND IN MARITIME LIENS

The Tolten

A QUESTION 'of far-reaching importance', in the words of Lord Justice Scott, and calling 'for careful consideration of British admiralty law, and if there be doubt about that, then of the general law of the sea among Western nations, out of which our maritime law largely grew, and from which it is to the interest of maritime commerce that it should not unnecessarily diverge', was decided by the Court of Appeal in *The Tolten*. The court held that the rule of common law jurisdiction, as stated simply in *Salmond on Torts*, 10th ed., § 42, at p. 185: 'No action will lie in England for any trespass or other tort committed in respect of land situated out of England. This is so even if no question as to the title to the land is in issue between the parties', did not prevent the plaintiffs having their action in rem for damage (in the admiralty sense of that word) tried and decided in the Admiralty Division of the High Court of Justice.

The plaintiffs, the United Africa Co., Ltd., who claimed to be the owners and occupiers of the Bulk Oil Wharf at Lagos, had brought an action in rem against the owners of the British motor vessel *Tolten* for damage done to their wharf when the *Tolten* came into collision with it on October 13, 1944, while proceeding to sea. The plaintiffs alleged that the vessel was negligently navigated by the defendants or their servants on board the *Tolten*. The defendants, who by their pleadings specifically denied (inter alia) that the plaintiffs were the owners and occupiers of the wharf in question, objected, on a preliminary point of law, that the court had no jurisdiction to adjudicate in an action in rem for damage done by a vessel to property attached to foreign soil.

Mr. Justice Bucknill in a reserved judgment on December 3, 1945, decided in favour of the plaintiffs, and held that the Admiralty Court Act, 1861, stated simply that the High Court of Admiralty shall have jurisdiction over 'any claim for damage done by any ship', and did not limit the locality in any way; that the Act had been held to apply to damage done by a ship to a pier in British waters, and to damage by collision between ships in foreign waters. His Lordship saw no reason why a case of the kind in question

should not be included within the plain words of the statute, and overruled the objection. The defendants appealed.

On appeal, it was argued for the defendants that an English court will not entertain actions for damage to land situate outside England, and even if this rule did not apply to actions brought in personam, it did apply to an action in rem where a maritime lien exists. The reason why common law and Chancery Courts did not exercise jurisdiction over foreign soil, *viz.*, that they cannot enforce their decree in a foreign jurisdiction, ought to be regarded as applying also to Admiralty Courts. Counsel urged comparison with *British South Africa Co.* v. *Companhia de Moçambique*, [1893] A.C. 602, where Lord Herschell put it on the ground of 'universal consent'. Plaintiffs' counsel advanced in answer to these points the arguments, first, that the only relief sought was for damages, so that the rule concerning 'effectiveness' was of no application, and secondly, that the objection on the ground of 'comity of nations' could not be sustained because this case was directed against a private individual, a British subject, who was in England.

'The issue', said Lord Justice Scott, delivering judgment, 'is not whether the statement of claim discloses a good cause of action, but whether the court has jurisdiction to entertain it. The Judicature Act, 1925, by section 22 (1) (*a*), provides that "the High Court shall, in relation to admiralty matters, have the following jurisdiction . . ." inter alia "(iv) any claim for damage done by a ship"; and by section 33 (2), that the jurisdiction may be either *in personam* or *in rem*. That Act did not create new jurisdiction; for those provisions merely restated the jurisdiction conferred by sections 7 and 35 of the Admiralty Court Act, 1861, in identical terms, and that Act was intended to extend jurisdiction. Bucknill, J. (as he then was), relied on the wide and unqualified language there used, and held that it covered the facts of the present case. I agree entirely with his judgment. The defendants' argument for a limiting interpretation of those very words raises questions of general importance, relating on the one hand to public and private international law, both procedural and substantive, and on the other, to the nature and scope of English jurisdiction in admiralty and to the nature and effects of the maritime lien for damage as recognised today by British admiralty courts. In the result, the forensic dispute has taken shape as an antinomy between Mr. Devlin's proposition that there is in England a universal rule of private international law, based on settled practice, that no English court ever takes cognisance of a tort committed in respect of land situate abroad, and the counter proposition submitted by Mr. Bateson that the Admiralty Division will always, or at least

in an action in rem, take cognisance of " damage " done by a ship anywhere within the geographical limits of admiralty jurisdiction; and also will give effect to the proprietary right of maritime lien to which the tortious act or default of the wrong-doing ship automatically gives rise in favour of the injured party wherever his property may have been situate, whether in this country, or out of it, whether it was afloat or on land, and whether movable or immovable. The two competing principles of law, at any rate as originally propounded by opposing counsel, are equally universal in scope, and on the facts of the present case, seem to be mutually exclusive—one therefore must give way to the other, or one must constitute an exception from the other. When I speak of the wrong-doing ship, I use the personification metaphorically for the persons responsible in law for her negligent navigation.'

As the learned Lord Justice next pointed out, ' proceedings in admiralty against the owners of a delinquent ship may, at the choice of the plaintiffs be either in personam or in rem. In the former procedure the defendants are named as in a King's Bench writ; in the latter, the writ is addressed to " the owners of the . . . ship " as defendants; the proceeding is against the ship, and no personal service is required '. The present action was, it should be remembered, an action *in rem*.

' Having its origin in the rule of the civil law ', said Sir John Jervis, delivering the judgment of the Privy Council in the *Bold Buccleugh* (7 Moo.P.C. 267, 284), a maritime lien is well defined by Lord Tenterden to mean a claim or privilege upon a thing to be carried into effect by legal process; and Mr. Justice Story (1 Sumner, 78) explains that process to be a proceeding *in rem*, and adds, that ' whenever a lien or claim is given upon the thing, then the Admiralty enforces it by a proceeding *in rem*, and indeed is the only competent Court to enforce it. The positive principle of the automatic attachment to the ship of the creditor's lien on it is, at least, as indubitably a rule of substantive law in admiralty, as the negative principle, on which the *Moçambique* rule rests, is at common law, and, I think, more so '. ' One can state the position, for which the defendants contend,' continued Lord Justice Scott, ' almost as a *reductio ad absurdum*. Suppose ship A, by one and the same act of negligent navigation at Lagos, to have caused injury to (1) the plaintiff's wharf, (2) merchandise on the wharf, (3) people on the wharf, (4) ship B lying near the wharf. On these assumed facts, the injured parties numbers (2), (3), and (4) can conduct a suit in rem in the Admiralty Court, but if the *Moçambique* rule is applied, number (1) is barred. Can anything more contrary to common sense be imagined? The answer of the

plaintiffs based on the maritime lien alone is enough of itself to dismiss the appeal.'

Lord Justice Scott then dealt with the more fundamental questions of the Admiralty Court's jurisdiction, and of the general law of the sea, that were raised by the appeal, expressing the view that 'the law maritime of "damage", as administered in our Admiralty Court, vests a right of action in any person who suffers an injury anywhere in the world either to his person or to his property, whether movable or immovable, afloat or ashore, when caused by the maritime fault of the owner of a ship, he being responsible for the acts or defaults of his servants' (with a possible exception where the damage is done in foreign territorial waters, and it is proved that by the law of that country the English doctrine of *respondeat superior* does not apply). If this be the substantive law then 'it follows, at least logically, that it must be the same whether the procedure be *in rem* or *in personam*'.

'International law is not, as such', the learned Lord Justice went on, 'binding upon our municipal courts, but only in so far as our Courts have made it a part of our municipal law—whether as a result of statutory enactment or because the particular principle of international law, which may be in question, has been adopted by our courts as one recognised generally by all civilised nations. A comparable principle applies in regard to the general law of the sea and the maritime law administered in the Admiralty Court. That process of adoption is observable historically in the development of English admiralty law and jurisdiction. Originally the jurisdiction, both civil and criminal, was unlimited over the "high seas". The struggle with the common law courts has no bearing on this appeal, at any rate until the Admiralty Court Act, 1840. The present jurisdiction of the Admiralty Division of the High Court is based partly on statutes but primarily and mostly on principles previously adopted by the Admiralty Court from the general law of the sea observed by Western nations, instanced in early times, *e.g.*, by the laws of Oleron, and in later times widely followed in the general practice of continental nations. It has been characteristic of English judges exercising admiralty jurisdiction, as I have already said, to look to "the general law of the sea" for two allied, but distinct, purposes: first, to resolve doubts on a question of English law by adopting what they believed to be the relevant rule of the "general law"; and secondly, as a principle of judicial policy in order to avoid creating divergence by our law from the general law. The importance to maritime commerce of uniformity in all seas, the world over, has received frequent emphasis, both before the Judicature Acts and since.'

The Lord Justice next showed the integral connection between limitation of shipowner's liability and maritime lien. Both principles derived from the custom of merchants. The first had as its object to bring within foreseeable and moderate limits the risks to be undertaken by the shipowner when he adventured his ship on a commercial enterprise, and the means adopted was to keep his financial liabilities within the ambit of his ' fortune de mer ' consisting of ship and freight at risk on the voyage. The object of the second was, within that limit, to give to the main creditors of the shipowner, whose claims arose out of his maritime adventure, the protection of a ' privileged ' position—that of the maritime lien, or its Continental equivalent, the French word ' privilège '. The essence of the ' privilège ' was, and still is, whether in Continental or in English law, that it comes into existence automatically without any antecedent formality and simultaneously with the cause of action, and confers a true charge on the ship and freight of a proprietary kind in favour of the ' privileged ' creditor, while the principle of limitation was given operative effect by the ' droit de l'abandon '—the right of the shipowner to acquit himself of all the ' créances du voyage ' (there is no equivalent in English of the French word ' créance ', for the active correlative of our passive words ' debt ' or ' liability ', ' claims ' being insufficient to render the sense) by abandoning his ship to his creditors with a view to the ship being realised by the court and the proceeds distributed rateably amongst the creditors in accordance with the several priorities of their ' privilèges '.

' During the last forty years the correlation (between maritime lien and limitation of owner's liability) has been emphasised in two conventions ', continued Lord Justice Scott. ' They are products of the world-wide movement for the unification of maritime law in the interest of the overseas commerce of all nations, conducted by the International Maritime Committee formed in Belgium on the initiative of Louis Franck. The first conventions so passed were on salvage and collision. They were brought into force in the United Kingdom by the Maritime Conventions Act, 1911, supplemented by the abolition of the defence of compulsory pilotage (a rule of law which had been peculiar to this country) in the Pilotage Act, 1913. Our Sea Carriage of Goods Act gave legislative effect to another convention. Similar procedure produced in 1926 three more conventions, of which the subjects were : (1) Immunity of State-owned ships ; (2) Mortgages and Liens ; and (3) Limitation of Shipowner's Liability. [The Immunity Convention (as extended by a Protocol of 1934) provides for the abolition of immunity of State-

owned or State-operated ships when engaged in commerce (see Cmd. Papers 5672–3 of 1938) and when translated into British legislation, will prevent the repetition of such decisions as *The Parlement Belge* and *The Tervaete*, where the plea of sovereign immunity allowed State-owned commercial vessels to escape adjudication on the merits.] '

Lords Justice Scott, Somervell and Cohen were unanimous in dismissing the appeal with costs.

[Report: L.R. [1946] Probate 135, C.A.]

RECOGNITION OF POLYGAMOUS MARRIAGES

Srini Vasan (*otherwise Clayton*) v. *Srini Vasan*
Baindail (*otherwise Lawson*) v. *Baindail*

The Facts in these two cases are entirely parallel, and the decisions import a modification into the standard textbook suggestion that the only kind of marriage which English law recognises is the monogamous marriage, ' the voluntary union for life of one man with one woman, to the exclusion of all others '. In both cases under consideration a foreign marriage, notwithstanding its potentially polygamous character, was recognised by the court, and a second purported ' marriage ' in this country, to which the husband of the former partnership was a party, held consequently null and void.

In *Srini Vasan* the petitioner, a spinster domiciled in England, went through a form of marriage on December 26, 1936, at the Blackburn Registry Office with the respondent. The latter was a Hindu domiciled in India but temporarily resident in this country. On December 26, 1936, the respondent was already married, for in March, 1933, he had, unknown to the petitioner, been through a Hindu ceremony of marriage with a Hindu woman at Trivandrum, Travancore State, South India, and the Hindu marriage was still subsisting. In June, 1937, until which time the parties had lived together, the respondent returned to India alone. After January, 1938, he ceased to communicate with the petitioner.

Evidence was given as to Hindu law and as to the validity of the Hindu marriage.

In *Baindail*, the respondent, while domiciled in India, married, on May 1, 1928, an Indian woman according to Hindu rites in the United Provinces, India. By the customs and laws of the Hindu race this was a polygamous marriage. The respondent went through the ceremony of marriage with the petitioner at Holborn Registry Office on May 5, 1939, at which date the respondent's

Indian wife was still living. The petitioner and the respondent lived and cohabited at various places, and one child, a daughter, was born on February 22, 1940. They were still living in England on May 20, 1944, when the petitioner, having become aware of the Indian marriage, petitioned for a decree that the marriage in fact (but illegally) celebrated between her and the respondent was null and void and that she might have the custody of the child. Expert evidence was given that any ceremony performed according to the terms of an invitation to the Hindu marriage, produced by the petitioner, would be a valid Hindu marriage and would be recognised as valid in the courts of British India.

The Judgments

Delivering judgment in *Srini Vasan*, Barnard, J., distinguished *Hyde* v. *Hyde* ((1866), L.R. 1 P. & D. 130) in which the Divorce Court would not entertain a matrimonial cause for the purpose of granting relief or enforcing rights in respect of a marriage lacking the characteristics of monogamy, and drew attention to Lord Penzance's concluding words in his judgment in that case : ' All that is intended to be here decided is that as between each other they are not entitled to the remedies, the adjudication, or the relief of the matrimonial law of England '. Other passages in the authorities, though only obiter dicta, continued Barnard, J., went far beyond this and confirmed the textbook view that the monogamous marriage is the only kind recognised by the English courts. But as against these considerations must be placed the words of Lord Maugham, L.C., in his speech before the Committee of Privileges in the House of Lords in the *Sinha Peerage Claim* (Journals of the House of Lords, 1939, Vol. 171, p. 350) : ' It cannot, I think, be doubted now (notwithstanding some earlier dicta by eminent judges) that a Hindu marriage between persons domiciled in India is recognised in our courts, that the issue are regarded as legitimate, and that such issue can succeed to property in this country with the possible exception of realty '; and later on, Maugham, L.C., said : ' Having regard to the domicile of the parties to the marriage at the date when it was solemnised, the marriage would properly be treated as valid in this country for all purposes, except, it may be, the inheritance of real estate before the Law of Property Act, 1925, or the devolution of entailed interests as equitable interests before or since that date, and some other exceptional cases '. (The parties referred to by Lord Maugham were the petitioner's parents, who were at all times domiciled in the Presidency of Bengal, British India, and whose marriage took place in Bengal according to the formalities prescribed by Hindu law and usages, and was therefore

polygamous; and it was six years later, but before the birth of the petitioner and long before the date of the patent, that the petitioner's parents joined a religious sect, one of whose main tenets was monogamy, and thus, the petitioner's father not having married a second wife in the interval, converted a polygamous marriage into a monogamous one.)

Barnard, J., relying on the above passages from Lord Maugham's speech, held the Hindu marriage a valid marriage subsisting at the time the respondent went through the ceremony of marriage with the petitioner, which ceremony was therefore a nullity, the petitioner being entitled to a decree nisi, with costs. He indicated some of the results that might derive from non-recognition of the marriage: the respondent, for example, would be lawfully married to his Hindu wife in India, and to his English wife in England, but if he brought his Hindu wife to this country and lived with her here, he would be living in adultery with her. If he were to live with his Hindu wife in India for a part of the year and for the remainder of the year live with his English wife in England, he would be living with his lawful wife in each country, and in effect, therefore, English law would be encouraging polygamy and not frowning on it. 'Again, a Hindu marriage is indissoluble; but according to Mulla on *Hindu Law*, 9th ed., p. 513, a Hindu wife, deserted by her husband, can sue him for restitution of conjugal rights in the civil courts of British India. If, therefore, the respondent deserted both his Hindu wife and his English wife, he could be sued for restitution of conjugal rights by both wives, in the courts of their respective countries, and he might be ordered by those courts to return to two different wives in two different parts of the world.

Barnard, J., similarly held the Hindu marriage valid in *Baindail* and the case was taken to the Court of Appeal.

Delivering judgment, LORD GREENE, M.R., began by disposing of *Hyde* v. *Hyde*, quoting more fully than Barnard, J., had done the words of Lord Penzance in the Divorce Court: 'This court does not profess to decide upon the rights of succession or legitimacy which it might be proper to accord to the issue of the polygamous unions, nor upon the rights or obligations in relation to third persons which people living under the sanction of such unions may have created for themselves. All that is intended to be here decided is that as between each other they are not entitled to the remedies, the adjudication, or the relief of the matrimonial law of England'.

The problem (in *Baindail*) as it seemed to Lord Greene, must be approached from quite a different angle, the question being simply: On May 5, 1939, when the respondent took the petitioner to the registry office was he, or was he not, a married man so as

to be incapable of entering into another legitimate union? From the proposition that in general the status of a person depends on his personal law, which is the law of his domicile, it followed that by the law of the respondent's domicile at the time of his Hindu marriage, he unquestionably acquired the status of a married man according to Hindu law. He never lost that status. Did the existence of that status constitute a bar to a valid marriage in this country? Would that status be recognised in this country? 'For many purposes, quite obviously, the status would have to be recognised. If a Hindu domiciled in India died intestate in England leaving personal property in this country, the succession to the personal property would be governed by the law of his domicile; and in applying the law of his domicile effect would have to be given to the rights of any children of the Hindu marriage and of his Hindu widow . . . one can think of other cases'. But though 'the courts of this country do for some purposes give effect to the law of the domicile as affixing or imposing a particular status on a given person, it would be wrong to say that for all purposes the law of the domicile is necessarily conclusive as to capacity arising from status. There are some things which the courts of this country will not allow a person in this country to do, whatever status with its consequential capacity or incapacity the law of his domicile may give him. Slavery is an obvious case. The status of slavery would not be recognised here. . . . In the case of infants where different countries have different laws, it certainly is the view of high authority here that capacity to enter in England into an ordinary commercial contract is determined not by the law of the domicile but by the lex loci'.

In considering the question whether the courts of this country, in deciding upon the validity of this English marriage, would give effect to the status possessed by the respondent, Lord Greene, M.R., was of the opinion that 'it is certainly a matter to bear in mind that the prospect of an English court saying that it will not regard the status of marriage conferred by a Hindu ceremony would be a curious one when very little more than a mile away the Privy Council might be sitting and coming to a precisely opposite conclusion as to the validity of such a marriage on an Indian appeal'.

Lord Greene, M.R., considered in conclusion the consequences that might follow if the respondent's marriage with the petitioner were valid. She would be entitled to the consortium of her husband to the exclusion of any other woman, he to the consortium of his wife, who would be bound according to English notions of law to live with him provided he gave her a suitable home. 'If he decided to go back to India it would be her duty as a wife to follow him to

the home that he would provide. Assume that this takes place. Directly they land in India, by the law of India he is a man married to the Indian lady, and assuming, as I think we are bound to assume, that Hindu law would be the same in this respect as English law, that Hindu lady is his lawful wife in India and as such would be entitled to his consortium, he would be entitled to insist that she should live with him and she would be entitled to insist that he should provide a home for her. The position, therefore, would be that this English lady would find herself compelled in India either to leave her husband or share him with his Indian wife. What the position would be with regard to divorce in India I do not know, but if he had an Indian domicile she apparently could not divorce him in England. Whether or not she could divorce him in India because he was associating with a woman who under Indian law was his lawful wife I do not know and I do not stop to inquire. Is it right that the courts of this country should give effect to a ceremony of marriage, the result of which would be to put the petitioner into such a position? It seems to me that effect must be given to common sense and decency and that on a question which is not covered by authority considerations of that kind must carry very great weight. On principle it seems to me that the courts are for this purpose bound to recognise the Indian marriage as a valid marriage and an effective bar to any subsequent marriage in this country. Those are the short grounds on which I think this appeal should be decided'. Lord Greene, M.R., in view of arguments put forward on behalf of the respondent suggesting the alarming effect on the law of bigamy that would result from a decision in favour of the petitioner, was careful to point out that nothing he had said must be taken as having the slightest bearing on the law of bigamy.

The appeal was dismissed, Morton, L.J., and Bucknill, L.J., agreeing with Lord Greene, M.R.

[Reports: *Srini Vasan (otherwise Clayton)* v. *Srini Vasan*, L.R. [1946] Probate 67.

Baindail (otherwise Lawson) v. *Baindail*, L.R. [1946] Probate 122, C.A.]

PRIZE COURT. PREROGATIVE OF THE CROWN TO EFFECT RELEASE

The Salerno

The Facts

Before the outbreak of the war of 1939, the *Salerno*, registered at Hull, was owned by the Ellerman Wilson Line, Ltd. On

April 15, 1940, while on a voyage from Bergen to Hull, she was captured by the Germans. On April 19 the owners gave notice of abandonment to the underwriters, the West of England Mutual War Risks Association, now claimants in the action. On June 12, 1940, the ship was brought before the Hamburg Prize Court, and on October 4, 1940, was condemned by that Court as prize. On June 2, 1945, the ship arrived in Hull from Eckernforde, where she had been captured during the invasion of Germany, and on July 6, 1945, she was seized in prize. On August 21, 1945, the writ was issued, and on August 26 the ship was released on requisition to the Ministry of War Transport. On April 9, 1946, the original owners also entered an appearance as claimants, to avoid any question whether the Prize Court would recognise a claim by insurers. The application to the Court was for the release of the ship on payment of the Admiralty Marshal's expenses and appropriate court fees. The Procurator-General, on behalf of the Crown, sought to withdraw the vessel from condemnation as prize by the Court.

The claimants' application, on the ground that the *Salerno* did not become a ship of war, was based on the Naval Prize Act, 1864, s. 40 : ' Where any ship . . . belonging to any of Her Majesty's subjects after being taken as prize by the enemy . . . is retaken from the enemy by any of Her Majesty's ships of war the same shall be restored by decree of a Prize Court to the owner . . . Provided also, that where a ship after being so taken is set forth or used by any of Her Majesty's enemies as a ship of war, this provision for restitution shall not apply, and the ship shall be adjudicated on as in other cases of prize '. Alternatively, it was argued for the claimants, if the *Salerno* did become a ship of war (for which, she must be of an offensive character; see Colombos' *Treatise on Law of Prize*, 2nd ed., at p. 258), she became the property of the Crown on recapture and there was no necessity for condemnation.

Judgment by the President (Lord Merriman)

The question that has to be determined is what limitations, if any, apply to the right of the Crown, through its proper officer, to release ships and goods seized in prize and brought before the Prize Court, without proceeding to adjudication. Both parties to the action have expressed their willingness to accept the facts ascertained by the evidence suggesting that the *Salerno* had been set forth or used by the enemy as a ship of war, while at the same time uniting in the submission that the facts were irrelevant, and that the Court was bound to ignore them. Whether the ship was a ship of war or

not she had in fact been brought into the Prize Court, and, subject to any right which the Crown may have to reclaim possession of a captured warship as its own property without proceeding to condemnation, the Prize Court Rules apply in either case. Now the provisions relating to releases are contained in Order 13. By rule 1, property in the custody of the court, whether under arrest or otherwise, shall only be released under the authority of an instrument issued in the registry, to be called a release. By rule 2, a release shall be issued at any time before adjudication upon the application of the proper officer of the Crown, who, by Order 1, rule 1, in this case is H.M. Procurator-General. By rule 3, a release may be issued at any time upon the order of the judge. The submission by all parties is that rule 2 is intended to give effect to the right of the Crown, established by *The Elsebe* ((1804), 5 C.Rob. 173) and other authorities, to effect releases of ships or goods seized in prize; that it is peremptory, and that it precludes any consideration of the merits by the Court.

The President found a very wide distinction between extra-judicial release of the kind dealt with in *The Elsebe*, and the claim to a right on the part of the Crown to bestow at pleasure a ship or goods seized in prize without proceeding to condemnation. *The Elsebe*, in his opinion, decided beyond question that a release by the Crown to the owner is entirely extra-judicial and involves no question of adjudication [indeed, in *The Elsebe* 'the release was actually made at the instance of the Secretary of State after a decree of condemnation and while an appeal by the claimant to the Privy Council was pending'].

'How, then', concluded the judge, 'is this indisputable right of the Crown to release to a claimant before adjudication affected by the express words of section 40 of the Naval Prize Act, 1864? Can this same prerogative right be relied on where a British statute has enacted that in certain circumstances a British ship is to be withheld from her former British owners? In my opinion, it is important to consider the effect of section 55 of the Naval Prize Act, 1864. By this section it is provided that "Nothing in this Act shall take away, abridge or control, further or otherwise than as expressly provided by this Act, any right, power or prerogative of Her Majesty the Queen in right of her Crown, or in right of her office of Admiralty . . ." In face of this section it would, in my opinion, be straining the construction of section 40 to hold that the right of the Crown to forgo condemnation differs according as the right to condemnation depends on the general law of prize, or in the statute'.

The judge directed that the ship be released to the claimants, by reason of the right, power or prerogative of the Crown to release to the former owners.

[Report: L.R. [1946] Probate 189]

VALIDITY OF COMMON LAW MARRIAGE IN CHINA

Wolfenden v. *Wolfenden*

The Facts.

In October, 1938, the parties went through a ceremony of marriage at the Burgess Church of the Church of Scotland Mission in the Ichang District of Hupeh Province, China. The ceremony was performed by the minister of the mission. He was not episcopally ordained, nor was he authorised to perform a marriage under the Foreign Marriage Act, 1892. None of the usual formalities was complied with. It was the intention of both parties at the time of the ceremony to confirm it at a later date by a civil marriage before a proper Consular officer. Both had been informed, and believed, that this was necessary in order to effect a valid marriage. Shortly after the date of the ceremony, the wife said she would not bind herself by a civil ceremony, in spite of the husband's repeated requests that she should, and before long she returned to Canada, to her home. The parties at no time lived together again. The husband brought a petition for declaration of nullity of marriage on the ground that there had been no valid marriage, alternatively for divorce on the ground of the respondent's desertion. In support of his petition the husband filed correspondence between the parties. The wife was called as a witness. On June 6 the President referred the case to the King's Proctor for argument as to the validity of the marriage.

A Foreign Office certificate dated June 4, 1945, duly put in, made it clear that the marriage did not conform to the Foreign Marriage Act. The contention therefore that the marriage conformed to the law of the place where it was celebrated was inapplicable in the circumstances.

Judgment by the President (Lord Merriman).

The real question is whether the marriage is valid as a common law marriage, although not performed by an episcopally ordained priest. In *R.* v. *Millis* (1844), 10 Cl. & F. 534, it was decided, so far as England and Ireland are concerned, that a common law marriage can only be validly celebrated before an episcopally

ordained priest. (The decision arose out of a trial for bigamy, inasmuch as the accused had gone through the form of a second marriage after an earlier ceremony performed according to the rites of the Presbyterian Church.) If that decision had never been qualified, it manifestly would compel me to decide in the same sense, but that is not the position. In 1847 Dr. Lushington, in *Catterall* v. *Catterall* ((1847), 1 Rob.Eccl. 580) held that a marriage in New South Wales before a Presbyterian minister, where there was in fact consent between the parties to become husband and wife, was a valid marriage . . . notwithstanding the decision in *R.* v. *Millis*. He held, in effect, that that case did not apply with full force to a marriage performed in New South Wales. In *Maclean* v. *Cristall* ((1849), 7 Notes of Cases), Sir Erskine Perry, C.J., delivering the judgment of the full court of the Supreme Court of Judicature of Bombay, dealt fully with *Catterall* v. *Catterall*, which he followed, and examined the extent to which the decision in *R.* v. *Millis* applied in India. In the course of so doing he said : ' But the next step of the reasoning, as to the extent to which the English law has been introduced into India, is the point on which the judgment in the present case must depend. The rule on this subject is afforded by the doctrine of the common law with regard to colonies, which, though not strictly analogous, is more in point than any of the other rules in our law books. The rule in such case is, that although colonists take the law of England with them to their new home, they only take so much of it as is applicable to their situation and condition '. It was suggested that there was a distinction, inasmuch as we are here dealing with a place to which the Foreign Marriage Act applies, and a place in which, at the time in question, British citizens had extra-territorial rights. It is common ground in this case that the Chinese Order in Council of 1925 applied to the Province of Hupeh. . . . It was suggested . . . that if the theory is that this particular province (extra-territoriality being applicable) is British, then the whole law of England, without any exception, must apply also—in other words, that the decision in *R.* v. *Millis* would apply with full force and effect. I do not think that can be so for two reasons. First of all I do not see any distinction in principle between applying in a colony, as New South Wales was at the time of Dr. Lushington's judgment, only so much of the English law as suited the situation (but applying it notwithstanding the fact that there was a local Act of Parliament) and applying only so much of the English law as is suited to the situation of a British subject in this Province of Hupeh, notwithstanding that by Order in Council having the effect of legislation, the courts of law are set up there to administer British justice. Unless there is something in

either case which excludes anything but that which is laid down in the legislation, it seems to me that precisely the same principles apply in the one case as in the other. In fact there is nothing in the legislation which is inconsistent with that view, for I find in section 104 of the Chinese Order in Council this provision : ' Subject to the provisions of this Order the civil jurisdiction of every court acting under this Order shall, as far as circumstances admit, be exercised on the principles of and in conformity with English law for the time being in force '. That certainly cannot possibly be said to be exclusive.

It seems to me that whether one puts it on this basis that one of the circumstances which must be taken into account is that the English law is being imported into a foreign country which in all material respects is indistinguishable from a colony, so far as access to priests of the established church and the like is concerned, or whether one puts it on the other basis, that when it is indicated that the jurisdiction of the court shall be ' exercised on the principle of and in conformity with the English law for the time being in force ', the English law for the time being in force consisting not only of the decision in *R.* v. *Millis* as interpreted, as far as such a situation is concerned, by the decisions in *Catterall* v. *Catterall* and *Maclean* v. *Cristall*, one comes to the same result. In such a territory as this there is, so far as the requirements of English law are concerned in relation to a common law marriage, no obligation that the ceremony shall be performed in the presence of an episcopally ordained priest.

In my opinion, therefore, so far as the first point is concerned, it seems to me that the petition on the ground of nullity must fail, and that it is my duty to say that this marriage was a valid marriage. [On the charge of desertion his Lordship granted a decree nisi.]

[Report: L.R. [1946] Probate 61.]

VALIDITY OF MARRIAGE BY PROXY

Apt (*otherwise Magnus*) v. *Apt*

The Facts.

The petitioner sought the annulment of a ceremony of marriage gone through on January 15, 1941, at a Buenos Aires Registry Office. The respondent, Mr. Gunter German Apt, who was at all material times domiciled in the Argentine, was present at the ceremony, at which the petitioner, who was at the time in England and there domiciled, was represented by a proxy acting under the authority of a power-of-attorney executed for that specific purpose

in London in November, 1940. War time restrictions made it impossible for the petitioner to travel to the Argentine at the time of the marriage. The wife was eager to join her husband and made repeated efforts to that end both during and after the war. The husband ceased, however, to reply to her letters and took no steps to enable her to obtain a permit to travel to the Argentine, and in consequence the wife concluded that he no longer wished her to join him, and decided to bring the present petition.

The suit was undefended, and his Lordship invoked the assistance of the King's Proctor. An Argentine lawyer was called as an expert witness.

Judgment.

In giving judgment, the President (Lord Merriman) said it was proved that the ceremony was valid and effectual by the law of the Argentine, which recognised proxy marriages, but the petitioner contended it was not a marriage recognised by the law of England. The question whether in those circumstances English law would recognise the celebration of a marriage by proxy as creating the status of marriage in England was one of considerable public importance. So far as he (his Lordship) was aware, there was no English authority directly in point. The President referred to Lord Dunedin's opinion in *Berthiaume* v. *Dastous*, [1930] A.C. 79, at p. 83: 'If there is one question better settled than any other in international law it is that as regards marriage—putting aside the question of capacity—*locus regit actum*. If a marriage is good by the laws of the country where it is effected it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would not constitute marriage in the country of the domicile of one or other of the spouses'.

It had been argued for the petitioner that it was vital to determine what, in relation to any marriage was merely, in Lord Dunedin's words, 'proceeding or ceremony'. In *Brook* v. *Brook*, 9 H.L.Cas. 193, the distinction between forms and essentials was fully discussed, and Lord Campbell said (at p. 207): 'But while the forms of entering into the marriage are to be regulated by the *lex loci contractus*, the essentials of the contract depend upon the *lex domicilii*, the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated'.

The question was, therefore, into which category, form or essence, proxy marriage fell. It had been argued for the petitioner that the distinction between form and essence was not absolute,

but that public policy required certain essential ingredients in the ceremony or proceeding itself, and that the question whether the presence of both parties was essential must be determined as a matter of public policy by English law.

After examining the arguments advanced to show the respects in which a proxy marriage offended public policy, his Lordship said that undoubtedly proxy marriages were liable to abuse, but this could be prevented or cured by legislation. Proxy marriages were recognised by the canon law, and in Christian countries such as Spain and Portugal. Their validity had also been recognised in the U.S.A.

His Lordship stated his conclusions as follows: the ceremony was performed strictly in accordance with the law of Argentina; the celebration of marriage by proxy was a matter of the form of the ceremony or proceeding, and not an essential of the marriage; there was nothing abhorrent to Christian ideas in the adoption of that form; and, in the absence of legislation to the contrary, there was no doctrine of public policy which entitled him (his Lordship) to hold that the ceremony, valid where it was performed, was not effective in this country to constitute a valid marriage.

The petition was dismissed.

BOOK REVIEWS

The British Year Book of International Law. Vol. 22 [London: Oxford University Press. 1945. vi and 341 pp. 27s. 6d. net].

Few publications can have contributed more to the study of international law in England than the *British Year Book*. It was obliged to suspend publication after the outbreak of war, but Vol. 21 which appeared in 1944 under the editorship of Professor Lauterpacht, fully maintained the book's pre-war high standard. The present volume contains a wealth of interesting material and is nearly seventy pages longer than the 1944 number.

Whilst it would be invidious to single out any of the articles for special mention, the reader will probably find Mr. G. G. Fitzmaurice's contribution on 'Some Aspects of Modern Contraband Control and the Law of Prize' of particular interest as setting out the important developments effected in prize law during the Second World War. Also of topical interest is Mr. Mervyn Jones's article 'Who are British Protected Persons?' At a time when, as we hope, international law stands on the threshold of further expansion, Mr. Glanville Williams's treatment of a perennial difference of opinion is of more than academic interest: 'International law and the controversy concerning the word "Law"'. Mr. C. Wilfred Jenks deals in a masterly manner with 'Some Constitutional Problems of International Organisations', with particular reference to the specialised agencies related to the United Nations under the San Francisco Charter. As he states, 'international lawyers must now be prepared to recognise as one of the major divisions of their subject the comparative law of the constitutions of international organisations'.

All international lawyers should read Professor Lauterpacht's article on 'De facto recognition, withdrawal of recognition and conditional recognition' as it represents an authoritative exposition of a most complicated problem. Two articles deal with special branches of international law: 'The Most-Favoured-Nation Standard in British State Practice' by Dr. G. Schwarzenberger, and 'The Place of the Calvo Clause in International Law' by Dr. K. Lipstein. In his contribution on 'International Civil Aviation and the Law', Mr. Jennings examines the present position of a subject of increasing importance under its three principal requirements: the privilege of flight; the privilege of landing; and the privilege of engaging in commerce, all of which are still mainly based on territorial sovereignty. Mr. J. Walter Jones and Mr. Wyndham L. Walker contribute two articles which are mainly of historical interest:

'Leibniz as International Lawyer' and 'The Cannon Shot Rule in Territorial Waters'.

Most of the subjects dealt with in this volume relate to public international law, but Mr. J. H. C. Morris contributes a very valuable article on 'The Transfer of Chattels in the Conflict of Laws', in which he exhaustively examines the two distinct situations: (a) when chattels situate in one State are transferred to another, and (b) when chattels are taken out of a State by someone not the owner and dealt with in a second State.

This volume is distinguished, like its precedessors, by a number of notes on matters of current interest, and by a thorough review of the decisions of the English Courts in 1943–44 involving points of international law to which is subjoined a further review by Mr. Henriques of the decisions relating to trading with the enemy in 1944. Among the contributors of notes, Mr. F. A. Mann focuses attention on the many legal and political problems arising out of the Bretton Woods Agreement, and refers in particular to those 'numerous terms of the treaty which may be crystal-clear to an economist but are highly perplexing to a lawyer'.

Cases reviewed and considered are *May* v. *May*, 169 L.T. 43, where, following the decision in *Boldrini* v. *Boldrini*, it was held that the fact that an enemy alien who landed in England as 'a trainee' was liable to be compelled to leave this country at the pleasure of the Home Secretary, did not operate to prevent his acquiring a domicile here; *Easterbrook* v. *Easterbrook*, 60 T.L.R. 80, and *Hutter* v. *Hutter*, 40 T.L.R. 541, where the judgments appear to demolish the distinction between residence and domicile in establishing the court's jurisdiction in nullity suits; and *Simm* v. *Simm*, 60 T.L.R. 556, where it was decided, following the statement in Cheshire's *Private International Law* (2nd ed., p. 372), as opposed to Dicey's view (*Conflict of Laws*, 5th ed., p. 288), that the possession by the respondent of a residence within the jurisdiction was sufficient without it being necessary that both parties should be resident in England, or that the matrimonial home should be here.

The Year Book also contains a comprehensive review of recent books and a very useful index.

C. JOHN COLOMBOS.

Cambridge Studies in International and Comparative Law. Comparative Law. An Introduction to the Comparative Method of Legal Study and Research. By H. C. GUTTERIDGE [London: Cambridge University Press. 1946. 208 pp. 12s. 6d. net].

THIS is the first book in the series 'Cambridge Studies' which, as the General Introduction informs us, 'has been designed to fill certain gaps that are to be found in that part of English legal literature which is concerned with international relations'. Three

separate branches of the law are involved: public international law, private international law or the conflict of laws, and comparative law.

The general editors conceive, and rightly, that 'in the field of public international law there is a growing need, at a time when the foundations of the new international order are being laid, for a fuller treatment of questions of international law and organisation than is possible within the limits of textbooks devoted to the subject as a whole', and that such treatment may assist in the progressive codification of international law. Widely interpreted, the phrase 'international law' may also permit 'of the inclusion in the series of volumes dealing with certain aspects of diplomacy and international relations in general'.

The growing complexity of international relations makes it similarly difficult for a single treatise, as in Dicey's day, to deal adequately with private international law in one volume, and the editors give us cause to hope for monographs on such subjects as the law of contracts, marriage, jurisdiction, and the like.

For comparative law (the 'unfortunate but generally accepted label for the comparative method of legal study and research') this monograph advances the proposition that it has come to be recognised as the best means of promoting a community of thought and interests between the lawyers of different nations, and as a valuable auxiliary to the development and reform of our own and other systems of law, and that in particular it plays 'a very important part in the movement for the unification of private law'. These are, of course, the major themes that are developed in the present volume, devoted to what the author engagingly calls the 'Cinderella of the legal sciences'. The first two chapters outline the province of comparative law and investigate its origins and development, and the reader is then confronted, in the tactically placed Chapter 3, with the very necessary examination of the value of comparative law—necessary, of course, in view of the insecure position of 'Cinderella' in the domain of the law, and the atmosphere of hostility, or, at best, indifference, which surrounds her. 'A jurist is a man who knows a little about the law of every country except his own', said Lord Bowen, and such expressions of cynicism are not unrivalled in this or other countries. Under the headings 'comparative jurisprudence', 'comparative legal history', 'constitutional and administrative law', 'criminal law', 'industrial or labour law', 'family law and the law of property and succession', 'law of obligations' (contract and tort), 'comparative commercial law', 'comparative procedure', 'legislation and law reform' and 'comparison as a source of law', Chapter 3 objectively assesses the constructive contribution which the comparative method of legal research can make. The reader can surely be left in no doubt that this contribution can be a very real one in some at least of the fields indicated, notably in administrative law, labour law,

contract and tort, and comparative commercial law, though to be genuinely valuable in any case, the contribution must result from a breadth and profundity of scholarship as well as an acute practical sense, which, in combination, are rare attributes in an individual. Team work, however, may lend itself very appropriately to comparative legal research.

By the end of Chapter 3 Cinderella has a shoe. She may proceed to the dance. Chapters 4 and 5 show her a very fitting partner and helpmate for the conflict of laws and the law of nations.

The author regrets the tendency for the rules of English private international law to veer increasingly away from civil law concepts. Part of the reason for this he finds in the unsatisfactory requisites for the proof of foreign law in the English Courts. The remedy may perhaps lie in the codification of private international law, on an international basis, carried out with the assistance of the comparative method. In Chapter 5 the submission is developed ' that the value of the assistance which comparative law may be in a position to render, in developing the rules of the law of nations, cannot be measured solely with reference to its possible use as a means of discovering such principles of private law as are held in common by all systems of law and are, therefore, to be regarded as ripe for absorption into international law. It depends above all on its employment as a corrective to any tendency there may be on the part of international judges or lawyers or on the part of draftsmen of treaties to employ concepts or rules which either belong exclusively to a single system or are only to be found in a few of such systems '.

In a mere seventy pages the reader has by now been confronted with a very challenging survey of the potential value of the comparative method. Very properly, the ensuing Chapters 6 to 10 are devoted to the mechanics of the method, while the final three chapters are concerned with the particularly important problem of the ' Unification of Law '. An appendix gives a useful list of foreign law reports and law reviews arranged under the countries of their origin and the book is also provided with tables of cases and statutes, and an index.

This enlightening and eminently readable little book offers a stimulus and a challenge to all interested in international legal relations. As the first volume in the projected series of ' Cambridge Studies ' it sets a high standard.

E. H. Wall.

The International Law of the Sea. Second Impression. By A. Pearce Higgins and C. John Colombos [London : Longmans, Green & Co., Ltd. 1946. xvi and 647 pp. 42s. net].

A new reprint is now available of this standard textbook. When it was first published in 1943, Admiral Sir Herbert Richmond in his

review in the *Transactions of the Grotius Society* wrote of it: 'The first step towards the re-establishment of the law after the war is a clear statement of its principles and their application in the light of the most recent experience. *The International Law of the Sea* does this with great lucidity and with all the wealth of learning accumulated during many years devoted by the authors to its study and practice. The reproach that there was no British or American treatise on this subject—a subject always of supreme importance to both, and now to the whole world—is removed by this book, and its appearance is, therefore, to be most cordially welcomed'.

To such a tribute as this there is little to add. This combination of the late Professor Pearce Higgins's and of Dr. Colombos's specialised knowledge of maritime law has resulted in an authoritative and up-to-date book which must prove invaluable to practitioner and student alike.

The work is divided for easy reference into two parts: (1) The international law of the sea in time of peace, and (2) The international law of the sea in time of war. Without reference to the excellent index it is possible to find one's way about the book by consulting the chapter headings and sub-headings under the two main sub-divisions. Thus the volume opens with a chapter on the 'Sources and Development of International Law of the Sea' with a full discussion of the relative importance of the primary factors in the formulation of this law by the old maritime codes, the judgments of the English Admiralty Courts, custom and usage and international treaties.

The book is mainly an exposition of British law and practice, but considerable attention has also been devoted to the practice of foreign maritime nations and, in particular, to that of the United States. Thus the conflicting theory and practice of States in regard to territorial waters is fully elaborated in Chapter 3, and a similar discussion will be found in Chapter 8 on a further topic of vital interest at the present moment, that relating to the 'Legal regime of merchant ships'. Another chapter containing invaluable information which cannot be found in any other textbook on international law is Chapter 9 on the 'International regulation of navigation, shipping and overseas communications', in which the whole field of international practice is discussed and suggestions regarding the necessity of establishing an International Sea Commission are put forward.

The same thoroughness and competency of treatment is found in Part II of the book, where all the aspects of naval warfare are discussed in detail. It illustrates, as perhaps no other book does, the chief events of the first and second World Wars. The last chapter on 'The future rules of naval warfare' is a masterly presentation of the authors' contention that future endeavours to forecast the rules of the war at sea must 'take full consideration of the realities of war and of the need of strengthening the sanctions

against their violation'. This will require a properly organised international society 'capable of enforcing the rules of international law and of suitably regulating existing conditions in order to establish a wider and permanent system of general security'.

But the most important feature by far of this book for the practitioner, the naval officer and all persons interested in maritime matters is the clear and direct manner in which all the rules of the sea, both in time of peace and of war, are authoritatively discussed. Many of these rules have for a long time been of a highly controversial character, but the solutions reached by the learned authors appear in all cases to be sound and conclusive. The same remark applies to the many problems of the sea with regard to which the law was either uncertain or non-existent. It can, therefore, be confidently predicted that this treatise will rank as a classic for many years to come. It should help materially in furthering the work now being undertaken by the General Assembly of the United Nations, in accordance with its Resolution of last December, to carry out 'the progressive development of international law and its codification', since any future attempt to codify maritime international law must of necessity take account of this book as providing one of the sources from which the law of the sea is to be ascertained.

In conclusion, it may safely be asserted that this treatise, together with Professor Hyde's 'International Law, chiefly as interpreted and applied by the United States', constitute two of the most substantial contributions made to the Anglo-American literature of public international law during the last thirty years.

R. K. Kuratowski.

The Effect of War on Contracts. Second Edition. By G. J. Webber, ll.d. With a Foreword by the Rt. Hon. Sir David Maxwell Fyfe, k.c., m.p. [London: The Solicitors' Law Stationery Society, Ltd. 1946. lxviii and 802 pp. 77s. 6d. net].

The unusual merit of this outstanding book—as Sir David Maxwell Fyfe in his foreword implies—is the catholicity of its approach. Writing primarily for practitioners, Dr. Webber has given a very extensive interpretation to a wide subject which impinges not only upon many branches of the law of contract, but also upon questions involving international law, more particularly as expounded by Williston and in the American *Restatements of Law.* Nor is he content with taking into account a large number of American and Dominion decisions; he has ransacked the learned books and periodicals that were available during the war, in order to explain the juristic foundations of frustration, and of quasi-contract, and

to show that, not only is there no real conflict between the practical and the academic approach, but that the one approach is complementary and, indeed, essential to the other. In the judgments of the United States Supreme Court discussions of legal doctrines have always been prominent. In recent times the House of Lords has paid increasing respect to the opinions of text-writers both in England and in America, as well as to the decisions of the American Courts.

Dr. Webber visualises the law on the subject as the ceaseless striving, through trial and error, towards justice—always in the making. This instinct is plainly at the root of the doctrine of frustration (p. 406) of which Lord Sumner said: 'It is really a device by which the rules as to absolute contracts are reconciled with a special exception which justice demands' (*Hirji Mulji* v. *Cheong Yue Steamship Co., Ltd.* [1926] A.C. 497.) The same instinct lies at the basis of the modern law of quasi-contract, first stated by Lord Mansfield in *Moses* v. *Macferlan* (1760), 2 Burr. 1005, and recently affirmed by Lord Wright in *Fibrosa Spolka Akcyjna* v. *Fairbairn*, [1943] A.C. 32. This instinct was voiced by Lord Simon when he introduced and piloted what is now the Law Reform (Frustrated Contracts) Act, 1943, passed to adjust the rights and liabilities of parties to frustrated contracts (Chapters 26, 27).

This book, in form a second edition, is, in effect, a re-writing, being three times as large as the first edition. Part I deals with War, Emergency Powers, and Enemy Character. The subject of Part II is War and Commercial Contracts—Agency, Partnership, Enemy Shareholders and Directors, Sale of Goods, Negotiable Instruments, Life Insurance, Affreightment, Insurance of Property and Contract of Service. The second half of the book is devoted to Frustration, (Part III) and Effects of Frustration (Part IV). A considerable number of appendices brings the law up to August 31, 1945. There is also a selected bibliography of the literature, practical and academic, printed at the outset.

Much of the first half of the book is now of historical interest only. But questions will certainly come before the courts for many years yet, arising out of the law as it stood during the war, *e.g.*, the Trading with the Enemy Act, 1939, or the construction of emergency powers and the rule of *ultra vires*. In the section on the operation of Statutes of Limitation (pp. 177–185), the author withdraws the opinion he had expressed in the first edition that in every case time ran against an alien enemy (p. 177, note 5), and submits in the present edition that where the potential plaintiff was an alien enemy at the date when the course of action would otherwise have accrued, the period of limitation would not begin to run against him. Once, however, it had begun to run against him, it would continue to do so as the Limitation Act, 1939, does not suspend time in his favour.

Chapter 14, 'Contract of Service', is of both historical and

practical importance, whilst that on Frustration and its effects exhibits a vast amount of industry and a wide range of erudition. The differing, and indeed, contradictory dicta of eminent judges are analysed; several references are given to their views, in particular to those of Lord Wright, as found in his extra-judicial ' Legal Essays and Addresses ' (1939) and later, in the trilogy of Frustration cases in the House of Lords, conveniently called the *Constantine Case*, [1942] A.C. 154, the *Denny Mott Case*, [1944] A.C. 265, and the *Cricklewood Case*, [1945] A.C. 221. In the last case, at p. 228, Lord Simon gives for the first time a comprehensive definition of frustration, which is likely to supersede previous definitions.

In a work of so wide a sweep, some overlapping is inevitable. The judgments in the leading cases are textually expounded with an unusual profusion of detail, and certain topics (*e.g.*, insurance of property) might, with advantage, have been treated less lengthily. The wealth of material exhibited by the author, who evidently revelled in his subject, may embarrass readers seeking a short practical answer to their problem. But the practitioner of the law, whilst relying above all on Sir Arnold McNair's standard book on the *Legal Effects of War* (2nd ed., 1944) will be able to find in Dr. Webber's work the basis, history and the interrelation of the rules upon the effect of war on contracts.

C. J. C.

Cambridge Studies in International and Comparative Law. Full Powers and Ratification. A Study in the Development of Treaty-making Procedure. By J. Mervyn Jones [London: Cambridge University Press. 1946. 182 pp. 12s. 6d. net].

This book is the second in the ' Cambridge Studies ' series, the general purpose of which has been indicated in the review of *Comparative Law* by Professor H. C. Gutteridge. It bears out by its sound scholarship the promise of the first volume and the high endeavour the general editors have set for the series as a whole.

Part I is devoted to ' full powers ', the study of the history of which shows that in early days it was in very fact the basis of the negotiation and signature of treaties. The plenipotentiary was the agent of the Sovereign from whom he held his authority, and the latter was bound by the acts of the plenipotentiary *intra vires*—' qui facit per alium facit per se '. Ratification of the signature of the plenipotentiary by the Sovereign was a formality, though a necessary one. Nowadays the treaty, not the signature, is ratified, and the signature is most frequently merely the authentication of a ' projet '.

In practice, ' full powers ' do not create and never have created a diplomatic status. They may, on the other hand, be given to persons other than diplomatic agents. The distinction between

' credentials ', ' commissions ' and ' full powers ' is made apparent, and the British practice in relation to them is fully discussed.

A particularly valuable section is devoted to inter-governmental and inter-departmental agreements.

In Part II the development in the nature and meaning of ratification is traced. The French and American Revolutions, in their attempt to banish from public law the notion of absolute sovereignty, changed ratification from the necessary acknowledgment by a principal of the act of his agent into a discretionary act. One consequence of this change was to outmode the doctrine that ratification was retroactive to the date of signature.

An extremely valuable final chapter examines in detail the relevance in international law of the clear stipulations frequently found in formal documents and treaties, insisting on the satisfaction of the constitutional requirements of municipal law.

W. P. Grieve.

La Paix Moderne. By Professor A. de la Pradelle [Paris: Editions Internationales. 1947. 528 pp.].

In this handy volume are collected together all the important documents connected with the efforts to establish international peace from the Final Act of the first Hague Conference in 1899 to the Chapultepec Act of the States represented at the Pan-American Conference at Mexico City in March, 1945. The collection was made, according to Professor de la Pradelle's foreword, for the use of the French delegation to the San Francisco Conference.

Needless to say that the collection of these documents, acts and treaties within one cover is invaluable to the international lawyer. The first part of the book includes all the important documents relating to the three main efforts made towards peace which Professor de la Pradelle classifies as follows: (a) The two Hague Conferences of 1899 and 1907; (b) The League of Nations from 1920 to 1940; and (c) the preliminaries leading to the San Francisco Conference of 1945. The second part of the book covers the sources of the ' international events for peace '. These are followed by a short chronology of the chief international occurrences from 1625 to 1945; a list of the principal international conventions regulating the pacific settlement of disputes from 1899 to 1935; a list of the cases decided by the Permanent Court of Arbitration from 1899 to 1939, and, finally, a list of the decisions and advisory opinions of the Permanent Court of International Justice from 1922 to 1939. There is also a useful table of the differences brought before the League of Nations under Articles 11 and 15 of the Covenant from 1920 to 1939.

The whole is introduced by the learned author in an admirable historical and critical essay of some 140 pages. This is obviously

too short for a subject of such importance, but Professor de la Pradelle has treated the topic with a lucidity and elegance of style which can only be the result of prolonged research and profound learning.

If we may offer a criticism of this essay it is that it has the defect of its qualities and that, brilliant though it is, it resorts at times to generalisations and to idealist conceptions which cannot always be reconciled with the stark realities of international relations. Someone once said, however, that the best history was written with national bias; and to this observation Professor de la Pradelle's essay is no exception: it constitutes a stimulating introduction to an impressive and invaluable collection of documents. In his direct approach to a future international society based on justice and the enforcement of law and order, he appears to have adopted Pascal's famous dictum that 'justice without force is a mockery and force without justice is tyranny'.

C. J. C.

The Problem of Pre-War Contracts in Peace Treaties. By E. WOLFF, DR.JUR. With a Foreword by SIR ARNOLD MCNAIR [London: Stevens & Sons, Ltd. 1946. 146 pp. 12s. 6d. net].

THE broad similarity between the provisions regarding contracts contained in the Treaties of Peace with Italy, Roumania, Bulgaria, Hungary and Finland recently signed in Paris and those of the treaties of the Versailles group dealing with the same subject-matter, makes this a timely little book which should prove of real service to practitioners.

The general rule regarding contracts in the Versailles group of treaties—until then treaties had not legislated specifically for contracts—was that contracts made before the war between parties who subsequently, by the municipal law of either party, became enemies, were dissolved as from the time of their so becoming enemies. The major exception to this general principle was 'any debt or other pecuniary obligation arising out of any act done or money paid' under the dissolved contract. The corresponding provision under the new Peace Treaties with the satellite enemy Powers reads: 'Any contract which required for its execution intercourse between any of the parties thereto having become enemies . . . shall . . . be deemed to have been dissolved as from the time when any of the parties thereto became enemies', without prejudice to the obligation to pay pecuniary debts or to 'repay amounts received as advances or payments on account and in respect of which such party has not rendered performance in return'.

Dr. Wolff's book is a brilliant analysis of the results of the application of this general principle after the first World War.

Particularly useful from the point of view of the practitioner are the chapters on the Definition of Contract, the Effect of Dissolution on Partly Performed Contracts, and on Quasi-Contractual Relations arising from Pre-War Contracts.

Dr. Wolff concludes with a number of suggestions aimed at making up for the shortcomings revealed in the operation, in respect of contracts, of the Versailles group of treaties. His suggestion that a future peace treaty, in treating of contracts made unlawful under municipal law, should make it clear that the criterion is not whether trading between the parties in general has been prohibited, but whether the particular contract has become unlawful, appears to be met in the satellite peace treaties as quoted. Other interesting suggestions are: that some unilateral acts, namely, offers and powers of attorney in so far as the latter are deemed under municipal law to be unilateral acts, should be included under the dissolution applied to pre-war contracts; and that certain classes of contract should be maintained, particularly those not affected under English law by the outbreak of war, and those under which property or concomitants of right have been created, including contracts for the transfer of property, contracts concerning companies, mortgages, pledges or liens, and leases or agreements for leases.

E. H. Wall.

International Law. Vol. I: International Law as applied by International Courts and Tribunals. By G. Schwarzenberger, ph.d., dr.jur. [London: Stevens & Sons, Ltd. 1945. xliv and 645 pp. 60s. net].

'The primary purpose of this book', writes the author in his Introduction, is 'to give a systematic survey of the practice of the Permanent Court of International Justice'. This purpose is part of the author's approach to his general objective, to which volumes II and III will add a further contribution, of helping to 're-establish the certainty' of international law.

As the learned author states: 'Modern international law owes its ethical basis to the speculations of the naturalist philosophers of the sixteenth and seventeenth centuries, its system to the great international lawyers of the eighteenth and nineteenth centuries, and its authority to the general support which the law of nations received from State practice during the relatively stable period between the Napoleonic Wars and the First World War. Once natural law degenerated into an ideology of power politics and was widely recognised as a mere cover for the reason of State, the days of the naturalist period of international law were numbered. Positivism claimed to provide an alternative to natural law by the rejection of any alleged principle of international law for which evidence could not be adduced from the practice of States. Yet all

that positivist international lawyers could do on the basis of their own premises was to study and systematise State practice '.

This passage from the introduction makes clear the underlying reasons why the author has chosen as one measuring-rod—and the most important—the practice of the Permanent Court of International Justice. He has set himself a further study, in Volume II, of International Law as applied in British State Practice, and in Volume III, of International Law as applied by the Courts within the British Commonwealth and Empire.

Twenty-four judgments, eighteen advisory opinions, and forty-one other judgments, orders or advisory opinions of the Permanent Court are subjected in this volume to exhaustive analysis in order to reveal what certain light they throw upon the following aspects of international law (which constitute the sub-divisions of the book): The foundations of international law; international personality; State jurisdiction; objects of international law, international transactions, war and neutrality and the law of international institutions. The author is well aware of the weakness of the demonstration this analysis affords: it would require considerably more judgments, orders or advisory opinions to constitute a sufficient measuring-rod for so comprehensive a field of study. The danger of over-generalisation from individual decisions has, however, been avoided, while, to help fill the gaps in certain aspects of the investigation, the author has justifiably and prudently fallen back on the decisions of the Permanent Court of Arbitration and on those of the Special Arbitration Tribunals established within its framework, which together provide a further one hundred and eighty-three cases. Awards of the mixed Arbitral Tribunals established under the Peace Treaties of 1919–1923 to the number of one hundred and thirty-six, as well as decisions of the administrative tribunal of the League of Nations, are also brought in aid.

This is a unique and scholarly work. The general conception and lay-out are essentially clear, and the book is very readable as a protracted thesis. Admirably compiled tables of reference make it easy for the reader to follow up any single line of investigation he may desire.

J.

Tratado de derecho international publico. 3 vols. By Hildebrando Accioly [Rio de Janeiro: Imprensa Nacional. 1945 and 1946.]

The original Brazilian edition of this valuable treatise on public international law by the eminent Ambassador and former Secretary-General of the Ministry of Foreign Relations of Brazil, appeared in the years 1933–1935. Volumes I and II were published in a French translation in 1940 and 1941 (Recueil Sirey, Paris) and now the complete work has been made available in Spanish. The translation

was virtually complete when war broke out in 1939, but, for obvious reasons, publication was delayed. For the present edition, a number of sections of the Brazilian and French versions were amended or amplified, so that this represents the most up-to-date statement of the three editions.

Volume I (666 pp.) contains Part I in four Books: dealing respectively with States (States as subjects of international law and the rights and duties of States); the legal position of the Pope and the Vatican City; the League of Nations (this book was retained in the present edition for historical interest, after some hesitation); and the individual in international relations.

Volume II (520 pp.) contains Parts II and III. Book I of Part II is devoted to territory (territorial sovereignty, sovereignty over rivers, maritime sovereignty, sovereignty over air spaces, modes of acquisition and loss of sovereignty), while Book II deals with ships and aeroplanes, their classification and nationality, their legal status respectively on or over the high seas, or under foreign jurisdiction. Part III analyses peaceful relations between States.

Volume III (648 pp.) contains Part IV dealing with disputes between States and their peaceful solution (diplomatic, juridical or coercive) and with the laws of war and neutrality.

It will be seen that the work is admirably arranged and very comprehensive. A clear, direct style, well preserved in the translation, and a bold lay-out of the text add to the value of this scholarly work of reference.

E. H. W.

SELECTED DOCUMENTS

INTRODUCTORY NOTE

Upon the basis of the general principles of international law is built a complicated superstructure of international agreements. These agreements touch a great variety of phases of life from the promotion of education and culture to the provision of meat and wheat. Without some knowledge of these agreements the study of international law is unreal and the picture incomplete. Therefore, it is proposed to publish as a regular feature of *The International Law Quarterly* selected documents which are likely to be of interest both to those who specialise in the study of international law and to other lawyers who, from time to time, may be called upon to deal with problems having an international flavour.

It is difficult to know where to begin, but October 24, 1945, the date of entry into force of the United Nations Charter, offers a convenient and logical starting point. It is not possible to print in the present issue of the *Quarterly* all the documents selected from among those which have been published since that date. Some of them will be printed in subsequent issues.

Most, but not all, of the documents will be chosen from Government White Papers. Documents such as the Peace Treaties, which have been widely discussed in the Press and which may be presumed to be easily available, will not be printed. As a general rule, documents will be selected either because they are likely to be of general interest to international lawyers, or because, though of a more specialised character, they illustrate some general trend in international relations.

To avoid as far as possible the risk of distorting the sense of documents, or of omitting what may be the only part which interests some readers, texts will be printed with the minimum of omissions. In general, however, preambles and the formal parts of agreements will not be included.

In the present issue of the *Quarterly* three documents of outstanding importance in international law are printed in full, namely, the Charter of the United Nations, the Statute of the International Court of Justice, and the General Convention on the Privileges and Immunities of the United Nations. This Convention not only defines the legal status and privileges of the United Nations, but also provides the maximum standard for the specialised agencies. In some

respects the privileges conferred by this Convention are more extensive than those available under the Diplomatic Privileges (Extension) Act, 1944, and this discrepancy was removed by the Diplomatic Privileges (Extension) Act, 1946.

By a resolution of February 13, 1946, which is included in the present issue, the General Assembly of the United Nations recommended a procedure for the unification of the privileges and immunities enjoyed by the United Nations and the various specialised agencies. It is the policy of the Government of the United Kingdom not to grant to a specialised agency the extended privileges under the Act of 1946 unless in the case of that agency the procedure for unification has been followed.

There are two classes of specialised agencies: organisations established before the war which are being brought into relation with the United Nations under Articles 57 and 63 of the Charter, and new organisations established since the war under the influence of the Charter. An early example of the second class is the Food and Agriculture Organisation. Most of the text of its constitution is printed in this issue.

There are also included (i) an agreement with Czechoslovakia relating to Money and Property situated in Czechoslovakia and the United Kingdom which have been subjected to special measures in consequence of the enemy occupation of Czechoslovakia, and (ii) a convention with Belgium for the Promotion of Mutual Understanding of Intellectual, Artistic and Scientific Activities. Agreements similar to that with Czechoslovakia have been made with France, Greece, Denmark and Luxembourg. The convention with Belgium is the first of what will probably be a series of 'cultural conventions' with many countries.

1

CHARTER OF THE UNITED NATIONS

SIGNED AT SAN FRANCISCO ON JUNE 26, 1945

WE, THE PEOPLES OF THE UNITED NATIONS,

DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the

obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples.

HAVE RESOLVED TO COMBINE OUR EFFORTS

TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organisation to be known as the United Nations.

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The purposes of the United Nations are :

1. To maintain international peace and security, and to that end : to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and;

4. To be a centre for harmonising the actions of nations in the attainment of these common ends.

Article 2

The Organisation and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles :

1. The Organisation is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

6. The Organisation shall ensure that States which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Chapter II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the States which, having participated in the United Nations Conference on International Organisation at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations.

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council.

CHAPTER III

ORGANS

Article 7

1. There are established as the principal organs of the United Nations : a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV

THE GENERAL ASSEMBLY

Composition.

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

Functions and powers.

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session,

immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

(*a*) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;

(*b*) promoting international co-operation in the economic, social, cultural, educational and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph (1) (*b*) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organisation.

2. The expenses of the Organisation shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialised agencies

referred to in Article 57 and shall examine the administrative budgets of such specialised agencies with a view to making recommendations to the agencies concerned.

Voting.

Article 18

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (*c*) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organisation shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Procedure.

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

Chapter V

THE SECURITY COUNCIL

Composition.

Article 23

1. The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organisation, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

Functions and powers.

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the purposes and principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security

Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Voting.

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members, including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Procedure.

Article 28

1. The Security Council shall be so organised as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organisation.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organisation as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its president.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council, whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any State which is not a Member of the United

Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a State which is not a Member of the United Nations.

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A State which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party, if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any

procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article, the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

Chapter VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or position of the parties concerned.

The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea or land forces of Members of the United Nations.

Article 43

1. All members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members, and shall be subject to ratification by the signatory States in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force, it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorisation of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures, shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the States concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilise such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council, with the exception of measures against any enemy State, as defined in paragraph 2 of this Article, provided for pursuant to Article 107, or in regional arrangements directed against renewal of aggressive policy on the part of any such State, until such time as the Organisation may, on request of the governments concerned, be charged with the responsibility for preventing further aggression by such a State.

2. The term ' enemy State ' as used in paragraph 1 of this Article applies to any State which during the second world war has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Chapter IX

INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote :

(*a*) higher standards of living, full employment, and conditions of economic and social progress and development;

(*b*) solutions of international economic, social, health and related problems; and international cultural and educational co-operation; and

(*c*) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialised agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies, thus brought into relationship with the United Nations are hereinafter referred to as ' specialised agencies '.

Article 58

The Organisation shall make recommendations for the co-ordination of the policies and activities of the specialised agencies.

Article 59

The Organisation shall, where appropriate, initiate negotiations among the States concerned for the creation of any new specialised agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organisation set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

Chapter X

THE ECONOMIC AND SOCIAL COUNCIL

Composition.

Article 61

1. The Economic and Social Council shall consist of eighteen Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

Functions and powers.

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialised agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may co-ordinate the activities of the specialised agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialised agencies. It may make arrangements with the Members of the United Nations and with the specialised agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialised agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Voting.

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

Procedure.

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialised agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialised agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence. Such arrangements may be made with international organisations and, where appropriate, with national organisations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its president.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the

convening of meetings on the request of a majority of its members.

Chapter XI

DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government, recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end :

(*a*) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment and their protection against abuses;

(*b*) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

(*c*) to further international peace and security;

(*d*) to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialised international bodies with a view to the practical achievement of the social, economic and scientific purposes set forth in this Article; and

(*e*) to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general

principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic and commercial matters.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as 'trust territories'.

Article 76

The basic objectives of the trusteeship system, in accordance with the purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

(*a*) to further international peace and security;

(*b*) to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

(*c*) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world; and

(*d*) to ensure equal treatment in social, economic and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

(*a*) territories now held under mandate;

(*b*) territories which may be detached from enemy States as a result of the second world war; and

(*c*) territories voluntarily placed under the system by States responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the States directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79 and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the 'administering authority', may be one or more States or the Organisation itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and

of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

Chapter XIII

THE TRUSTEESHIP COUNCIL

Composition.

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations :

(*a*) those Members administering trust territories;

(*b*) such of those Members mentioned by name in Article 23 as are not administering trust territories; and

(*c*) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United

Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and powers.

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

(*a*) consider reports submitted by the administering authority;

(*b*) accept petitions and examine them in consultation with the administering authority;

(*c*) provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and

(*d*) take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting.

Article 89

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure.

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its president.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialised agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialised agencies, which may at any time be so authorised by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

Chapter XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organisation may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organisation.

Article 98

The Secretary-General shall act in that capacity at all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organisation.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

1. The Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsiblities under Article 42, the parties

to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organisation as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any State which during the second world war has been an enemy of any signatory to the present Charter, taken or authorised as a result of that war by the governments having responsibility for such action.

Chapter XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A general conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

Chapter XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory States in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory States of each deposit as well as the Secretary-General of the Organisation when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and by a majority of the other signatory States. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America, which shall communicate copies thereof to all the signatory States.

4. The States signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English and Spanish texts are equally authentic, shall remain deposited in the archives of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the governments of the other signatory States.

In faith whereof the representatives of the governments of the United Nations have signed the present Charter.

Done at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

2

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Article 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

Chapter I

ORGANISATION OF THE COURT

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law.

Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same State.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a State which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more

than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilisation and of the principal legal systems of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same State obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and

exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more Chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

2. The Court may at any time form a Chamber for dealing with a particular case. The number of judges to constitute such a Chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the Chambers provided for in this Article if the parties so request.

Article 27

A judgment given by any of the Chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The Chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its Chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3 and 4 of this

Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances and compensation shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

Chapter II

COMPETENCE OF THE COURT

Article 34

1. Only States may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organisations information relevant to cases before it, and shall receive such information presented by such organisations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organisation or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organisation concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the States parties to the present Statute.

2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a State which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The States parties to the present Statute may at any time declare that they recognise as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning :

(*a*) the interpretation of a treaty;

(*b*) any question of international law;

(*c*) the existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the

matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply :

(*a*) international conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

(*b*) international custom, as evidence of a general practice accepted as law;

(*c*) the general principles of law recognised by civilised nations;

(*d*) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex æquo et bono*, if the parties agree thereto.

Chapter III

PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorise a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other States entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 42

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts : written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies ; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual, body, bureau, commission or other organisation that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

1. When, subject to the control of the Court, the agents, counsel and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

Article 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

Article 63

1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

2. Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

Chapter IV

ADVISORY OPINIONS

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorised by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any State entitled to appear before the Court or international organisation considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such State entitled to appear before the Court have failed to receive the special communication referred to in

paragraph 2 of this Article, such State may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organisations having presented written or oral statements or both shall be permitted to comment on the statements made by other States or organisations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States and organisations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other States and of international organisations immediately concerned.

Article 68

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognises them to be applicable.

CHAPTER V

AMENDMENT

Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of States which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

3

GENERAL CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13th FEBRUARY, 1946 [1]

I

The General Assembly approves the annexed convention on the Privileges and Immunities of the United Nations and proposes it for accession by each Member of the United Nations.

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Whereas Article 104 of the Charter of the United Nations provides that the Organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes, and

Whereas Article 105 of the Charter of the United Nations provides that the Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of the functions in connection with the Organisation

Consequently the General Assembly by a Resolution adopted on the 13th February, 1946, approved the following Convention and proposes it for accession by each Member of the United Nations.

Article I

Juridical Personality

Section 1.—The United Nations shall possess juridical personality. It shall have the capacity—

(*a*) to contract;

(*b*) to acquire and dispose of immovable and movable property;

(*c*) to institute legal proceedings.

Article II

Property, Funds and Assets

Section 2.—The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every

[1] ' Miscellaneous No. 6 (1946) ', Cmd. 6753.

form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3.—The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 4.—The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5.—Without being restricted by financial controls, regulations or moratoria of any kind—

(*a*) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6.—In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7.—The United Nations, its assets, income and other property shall be—

(*a*) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(*c*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 8.—While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever

possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III

Facilities in Respect of Communications

Section 9.—The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10.—The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV

The Representatives of Members

Section 11.—Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities—

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(*b*) inviolability for all papers and documents;

(*c*) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*d*) exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(*e*) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and also

(*g*) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption

from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12.—In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13.—Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a State for the discharge of their duties shall not be considered as periods of residence.

Section 14.—Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15.—The provisions of Section 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

Section 16.—In this Article the expression 'representatives' shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V

Officials

Section 17.—The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18.—Officials of the United Nations shall—

(*a*) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*b*) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(*c*) be immune from national service obligations;

(*d*) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(*e*) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(*f*) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(*g*) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19.—In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20.—Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21.—The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI

Experts on Missions for the United Nations

Section 22.—Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded—

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(*c*) inviolability for all papers and documents;

(*d*) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*e*) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23.—Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII

United Nations Laissez-Passer

Section 24.—The United Nations may issue United Nations *laissez-passer* to its officials. These *laissez-passer* shall be recognised and accepted as valid travel documents, by the authorities of Members, taking into account the provisions of Section 25.

Section 25.—Applications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26.—Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling on the business of the United Nations.

Section 27.—The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations *laissez-passer* on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28.—The provisions of this Article may be applied to the comparable officials of specialised agencies if the agreements for relationship made under Article 63 of the Charter so provide.

ARTICLE VIII

Settlement of Disputes

Section 29.—The United Nations shall make provisions for appropriate modes of settlement of—

(*a*) disputes arising out of contracts or other disputes of a private law character, to which the United Nations is a party;

(*b*) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30.—All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

FINAL ARTICLE

Section 31.—This convention is submitted to every Member of the United Nations for accession.

Section 32.—Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33.—The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34.—It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

Section 35.—This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36.—The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

4

PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL COURT OF JUSTICE

1. THE GENERAL ASSEMBLY, with a view to ensuring that the International Court of Justice shall enjoy the privileges, immunities and facilities necessary for the exercise of its functions and the fulfilment of its purposes, in the country of its seat and elsewhere, invites the members of the Court at their first Session to consider this question and to inform the Secretary-General of their recommendations.

2. THE GENERAL ASSEMBLY decides that the question of the privileges and immunities of the Court shall be considered as soon as possible after the receipt of the recommendations of the Court.

3. THE GENERAL ASSEMBLY recommends that, until further action has been taken, the rules which have been applied to the Permanent Court of International Justice should be observed by Members in relation to the International Court of Justice.

5

A DECLARATION BY HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM ACCEPTING THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE IN ALL LEGAL DISPUTES CONCERNING THE INTERPRETATION, APPLICATION OR VALIDITY OF ANY TREATY RELATING TO THE BOUNDARIES OF BRITISH HONDURAS [1]

I, ERNEST BEVIN, His Majesty's Principal Secretary of State for Foreign Affairs, declare on behalf of His Majesty's Government in the United Kingdom in accordance with paragraph 2 of Article 36 of the Statute of the International Court of Justice that for a period of five years from the date of this Declaration they accept as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning the interpretation, application or validity of any treaty relating to the boundaries of British Honduras, and over any questions arising out of any conclusion which the Court may reach with regard to such treaty.

[1] 'Miscellaneous No. 11 (1946)', Cmd. 6934.

Given under my hand and seal, at the Foreign Office, London, this Thirteenth day of February, One Thousand Nine Hundred and Forty-six.

(L.S.) ERNEST BEVIN.

6

RESOLUTION ON THE UNIFICATION OF PRIVILEGES AND IMMUNITIES ENJOYED BY THE UNITED NATIONS AND THE VARIOUS SPECIALISED AGENCIES

The General Assembly considers that there are many advantages in the unification as far as possible of the privileges and immunities enjoyed by the United Nations and the various specialised agencies.

While recognising that not all specialised agencies require all the privileges and immunities which may be needed by others, and that certain of these may, by reason of their particular functions, require privileges of a special nature which are not required by the United Nations itself, the General Assembly considers that the privileges and immunities of the United Nations should be regarded, as a general rule, as a maximum within which the various specialised agencies should enjoy such privileges and immunities as the appropriate fulfilment of their respective functions may require, and that no privileges and immunities which are not really necessary should be asked for.

Therefore the General Assembly Instructs the Secretary-General to open negotiations with a view to the reconsideration in the light both of the General Convention adopted by the United Nations and of the considerations above, of the provisions under which the specialised agencies at present enjoy privileges and immunities.

7

CONSTITUTION OF THE FOOD AND AGRICULTURE ORGANISATION OF THE UNITED NATIONS [1]

Article I

Functions of the Organisation

1. The Organisation shall collect, analyse, interpret, and disseminate information relating to nutrition, food and agriculture.

[1] 'Treaty Series No. 47 (1946)', Cmd. 6955.

2. The Organisation shall promote and, where appropriate, shall recommend national and international action with respect to—

(*a*) scientific, technological, social, and economic research relating to nutrition, food and agriculture;

(*b*) the improvement of education and administration relating to nutrition, food and agriculture, and the spread of public knowledge of nutritional and agricultural science and practice;

(*c*) the conservation of natural resources and the adoption of improved methods of agricultural production;

(*d*) the improvement of the processing, marketing, and distribution of food and agricultural products;

(*e*) the adoption of policies for the provision of adequate agricultural credit, national and international;

(*f*) the adoption of international policies with respect to agricultural commodity arrangements.

3. It shall also be the function of the Organisation—

(*a*) to furnish such technical assistance as governments may request;

(*b*) to organise, in co-operation with the governments concerned, such missions as may be needed to assist them to fulfil the obligations arising from their acceptance of the recommendations of the United Nations Conference on Food and Agriculture; and

(*c*) generally to take all necessary and appropriate action to implement the purposes of the Organisation as set forth in the Preamble.

ARTICLE II

MEMBERSHIP

1. The original Members of the Organisation shall be such of the nations specified in Annex I as accept this Constitution in accordance with the provisions of Article XXI.

2. Additional Members may be admitted to the Organisation by a vote concurred in by a two-thirds majority, of all the members of the Conference and upon acceptance of this Constitution as in force at the time of admission.

ARTICLE III

THE CONFERENCE

1. There shall be a Conference of the Organisation in which each Member nation shall be represented by one member.

2. Each Member nation may appoint an alternate, associates, and advisers to its member of the Conference. The Conference may make rules concerning the participation of alternates, associates, and advisers in its proceedings, but any such participation shall be

without the right to vote except in the case of an alternate or associate participating in the place of a member.

3. No member of the Conference may represent more than one Member nation.

4. Each Member nation shall have only one vote.

5. The Conference may invite any public international organisation which has responsibilities related to those of the Organisation to appoint a representative who shall participate in its meetings on the conditions prescribed by the Conference. No such representative shall have the right to vote.

6. The Conference shall meet at least once in every year.

7. The Conference shall elect its own officers, regulate its own procedure, and make rules governing the convocation of sessions and the determination of agenda.

8. Except as otherwise expressly provided in this Constitution, or by rules made by the Conference, all matters shall be decided by the Conference by a simple majority of the votes cast.

ARTICLE IV

FUNCTIONS OF THE CONFERENCE

1. The Conference shall determine the policy and approve the budget of the Organisation and shall exercise the other powers conferred upon it by this Constitution.

2. The Conference may by a two-thirds majority of the votes cast make recommendations concerning questions relating to food and agriculture to be submitted to Member nations for consideration with a view to implementation by national action.

3. The Conference may by a two-thirds majority of the votes cast submit conventions concerning questions relating to food and agriculture to Member nations for consideration with a view to their acceptance by the appropriate constitutional procedure.

4. The Conference shall make rules laying down the procedure to be followed to secure :

(*a*) proper consultation with governments and adequate technical preparation prior to consideration by the Conference of proposed recommendations and conventions ; and

(*b*) proper consultation with governments in regard to relations between the Organisation and national institutions or private persons.

5. The Conference may make recommendations to any public international organisation regarding any matter pertaining to the purpose of the Organisation.

6. The Conference may by a two-thirds majority of the votes cast agree to discharge any other functions consistent with the purposes of the Organisation which may be assigned to it by governments or provided for by any arrangement between the Organisation and any other public international organisation.

Article V

The Executive Committee

1. The Conference shall appoint an Executive Committee consisting of not less than nine or more than fifteen members or alternate or associate members of the Conference or their advisers who are qualified by administrative experience or other special qualifications to contribute to the attainment of the purpose of the Organisation. There shall be not more than one member from any Member nation. The tenure and other conditions of office of the members of the Executive Committee shall be subject to rules to be made by the Conference.

2. Subject to the provisions of paragraph 1 of this Article, the Conference shall have regard in appointing the Executive Committee to the desirability that its membership should reflect as varied as possible an experience of different types of economy in relation to food and agriculture.

3. The Conference may delegate to the Executive Committee such powers as it may determine, with the exception of the powers set forth in paragraph 2 of Article II, Article IV, paragraph 1 of Article VII, Article XIII, and Article XX of this Constitution.

4. The members of the Executive Committee shall exercise the powers delegated to them by the Conference on behalf of the whole Conference and not as representatives of their respective governments.

5. The Executive Committee shall appoint its own officers and, subject to any decisions of the Conference, shall regulate its own procedure.

Article VII

The Director-General

1. There shall be a Director-General of the Organisation who shall be appointed by the Conference by such procedure and on such terms as it may determine.

2. Subject to the general supervision of the Conference and its Executive Committee, the Director-General shall have full power and authority to direct the work of the Organisation.

3. The Director-General or a representative designated by him shall participate, without the right to vote, in all meetings of the Conference and of its Executive Committee and shall formulate for consideration by the Conference and the Executive Committee proposals for appropriate action in regard to matters coming before them.

Article VIII

Staff

1. The staff of the Organisation shall be appointed by the Director-General in accordance with such procedure as may be determined by rules made by the Conference.

2. The staff of the Organisation shall be responsible to the Director-General. Their responsibilities shall be exclusively international in character and they shall not seek or receive instructions in regard to the discharge thereof from any authority external to the Organisation. The Member nations undertake fully to respect the international character of the responsibilities of the staff and not to seek to influence any of their nationals in the discharge of such responsibilities.

3. In appointing the staff the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of selecting personnel recruited on as wide a geographical basis as is possible.

4. Each Member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staffs of other public international organisations.

Article XII

Co-operation with Other Organisations

1. In order to provide for close co-operation between the Organisation and other public international organisations with related responsibilities, the Conference may, subject to the provisions of Article XIII, enter into agreements with the competent authorities of such organisations defining the distribution of responsibilities and methods of co-operation.

2. The Director-General may, subject to any decisions of the Conference, enter into agreements with other public international organisations for the maintenance of common services, for common arrangements in regard to recruitment, training, conditions of service, and other related matters, and for interchanges of staff.

Article XIII

Relation to any General World Organisation

1. The Organisation shall, in accordance with the procedure provided for in the following paragraph, constitute a part of any general international organisation to which may be entrusted the co-ordination of the activities of international organisations with specialised responsibilities.

2. Arrangements for defining the relations between the Organisation and any such general organisation shall be subject to the approval of the Conference. Notwithstanding the provisions of

Article XX, such arrangements may, if approved by the Conference by a two-thirds majority of the votes cast, involve modification of the provisions of this Constitution : Provided that no such arrangements shall modify the purposes and limitations of the Organisation as set forth in this Constitution.

Article XV

Legal Status

1. The Organisation shall have the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted to it by this Constitution.

2. Each Member nation undertakes, in so far as it may be possible under its constitutional procedure, to afford to the Organisation all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation.

Article XVII

Interpretation of Constitution

Any question or dispute concerning the interpretation of this Constitution or any international convention adopted thereunder shall be referred for determination to an appropriate international court or arbitral tribunal in the manner prescribed by rules to be adopted by the Conference.

Article XVIII

Expenses

1. Subject to the provisions of Article XXV, the Director-General shall submit to the Conference an annual budget covering the anticipated expenses of the Organisation. Upon approval of a budget the total amount approved shall be allocated among the Member nations in proportions determined, from time to time, by the Conference. Each Member nation undertakes, subject to the requirements of its constitutional procedure, to contribute to the Organisation promptly its share of the expenses so determined.

Article XIX

Withdrawal

Any Member nation may give notice of withdrawal from the Organisation at any time after the expiration of four years from the date of its acceptance of this Constitution. Such notice shall take effect one year after the date of its communication to the Director-General of the Organisation subject to the Member nation's having at that time paid its annual contribution for each year of its

membership including the financial year following the date of such notice.

Article XX

Amendment of Constitution

1. Amendments to this Constitution involving new obligations for Member nations shall require the approval of the Conference by a vote concurred in by a two-thirds majority of all the members of the Conference and shall take effect on acceptance by two-thirds of the Member nations for each Member nation accepting the amendment and thereafter for each remaining Member nation on acceptance by it.

2. Other amendments shall take effect on adoption by the Conference by a vote concurred in by a two-thirds majority of all the members of the Conference.

Article XXI

Entry into Force of Constitution

8

AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE GOVERNMENT OF CZECHOSLOVAKIA RELATING TO MONEY AND PROPERTY SITUATED IN CZECHOSLOVAKIA AND THE UNITED KINGDOM WHICH HAVE BEEN SUBJECTED TO SPECIAL MEASURES IN CONSEQUENCE OF THE ENEMY OCCUPATION OF CZECHOSLOVAKIA.[1]

London, 1st November, 1945

Section 1.—*Object and Scope*

1. The present Agreement shall apply as regards the United Kingdom to money and property of Czechoslovak persons which have been dealt with under the Trading with the Enemy (Custodian) Order, 1939, as amended (hereinafter called the 'Custodian Order') and the Czechoslovakia (Restriction on Banking Accounts, &c.) Act, 1939 (hereinafter called the 'Restriction Act'). It shall apply as regards Czechoslovakia to money and property of United Kingdom persons which have been subject to special régimes since the 3rd September, 1939.

[1] 'Treaty Series No. 9 (1945)', Cmd. 6695.

For the purpose of this Agreement the phrase 'Czechoslovak persons' is defined as meaning persons whose money and property has been subject to the Custodian Order solely because they are and have been resident or carrying on business in Czechoslovakia, or coming within the descriptions in Section 1 (i) (*a*) of the Restriction Act so far as concerns money or property dealt with under that Act. The phrase 'United Kingdom persons' is defined as meaning persons whose money and property has been subject to special régimes solely because they are and have been resident or carrying on business in the United Kingdom.

2. This Agreement does not purport to deal with the position of the money and property of Czechoslovak and United Kingdom persons under Revenue or Foreign Exchange Control legislation in force in the United Kingdom or Czechoslovakia.

3. Money and property in the United Kingdom of British subjects resident in Czechoslovakia which have been subject to the Custodian Order or Restriction Act shall be dealt with outside the terms of this Agreement.

SECTION 2.—*Moneys*

4. *Bank Balances.*—Bank balances belonging to Czechoslovak and United Kingdom persons shall be placed at the disposal of the original account holders.

5. *Commercial Debts, Interest and other Moneys of a like nature due under Contracts*—

(*a*) Sterling and other sums at present held by the Custodian of Enemy Property in respect of commercial debts, interest and other moneys of a like nature due to Czechoslovak persons will be transferred to the Czechoslovak Government with a view to the satisfaction of the claims of the creditors.

Provided that nothing in the foregoing shall prevent the British Government, in cases which in its opinion justify this action, from agreeing with the Czechoslovak Government to the reversal to the person by whom payment was made of moneys now held by the Custodian.

(*b*) The Government of Czechoslovakia recognises that Czechoslovak persons who are debtors to United Kingdom persons in respect of moneys of the kinds dealth with in this Article remain liable to their creditors until the debts are fully discharged in accordance with the terms of the appropriate contracts. In this connection the Government of Czechoslovakia will assist United Kingdom creditors to trace and identify their debtors and facilitate the enforcement of the claims of the creditors against the original debtors, their heirs or successors.

6. *Other Moneys.*—Other moneys such as those arising from the

sale of goods, by way of legacies or under trusts or settlements or from other causes shall be dealt with in accordance with the provisions of Article 5.

Section 3.—*Property*

7. *Securities.*—Securities belonging to Czechoslovak and United Kingdom persons shall be placed at the disposal of the original holders.

Nevertheless it is recognised that securities held in either country for banks in the other country will only be released on proof that they are not beneficially owned by persons resident or carrying on business in a country with which the Government of the United Kingdom is at war or incorporated under the laws of such a country.

8. *Immovable Property.*—Czechoslovak and United Kingdom persons shall be free to resume ownership and management of their property.

9. *Movable Property.*—The two Governments will use their best endeavours to assist in tracing and returning the movable property of Czechoslovak and United Kingdom persons.

10. *Industrial, Literary and Artistic Property.*—This Agreement does not purport to deal with the disposition of industrial, literary and artistic property, which will be the subject of a special Agreement.

11. *Commercial, Financial and Industrial Undertakings.*—Any restrictions (other than those which are common to all persons resident in Czechoslovakia or the United Kingdom) which at present prevent persons in Czechoslovakia from resuming the management or direction of such undertakings in the United Kingdom shall be removed and any restrictions in Czechoslovakia which may prevent persons in the United Kingdom from resuming management or direction of their undertakings shall be removed likewise.

Section 4.—*General*

13. *Acts of Dispossession.*—The Government of Czechoslovakia will give no less favourable treatment to British subjects than they do to Czechoslovak citizens in regard to property situated in Czechoslovakia which has been the subject of acts of dispossession of the kinds covered by the Inter-Allied Declaration of the 5th January, 1943,[2] or of discriminatory legislation and they will take the action necessary to restore any British rights or interests which have been prejudiced.

14. *Removal of Legal Obstacles.*—The two contracting Governments agree to consider action for the removal of legal obstacles

[2] ' Miscellaneous No. 1 (1943) ', Cmd. 6418.

(including periods of prescription) arising from the war which may prevent an equitable settlement of outstanding indebtedness.

9

CONVENTION BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE BELGIAN GOVERNMENT FOR THE PROMOTION OF MUTUAL UNDERSTANDING OF INTELLECTUAL, ARTISTIC AND SCIENTIFIC ACTIVITIES '.[3]

Brussels, 17th April, 1946

ARTICLE 1

Each Contracting Government will use its best endeavours to ensure the creation, at Universities or other institutions for higher education in its territory, of Professorial chairs or of Readerships in the language, literature, history of, and in other subjects concerning the territory of the other Contracting Government.

ARTICLE 2

Each Contracting Government will be permitted to establish cultural Institutes in the territory of the other, provided that it complies with the general requirements of the local law with regard to the establishment of such institutes. The term ' Institute ' includes schools, libraries and film libraries dedicated to the purposes which the present Convention has in view.

ARTICLE 3

The Contracting Governments will encourage the interchange between their territories of University personnel, school teachers, students, research workers and representatives of other professions and occupations.

ARTICLE 4

The Contracting Governments will provide scholarships in such manner as to enable nationals of each country to pursue or undertake studies, technical training, or research in the territory of the other Contracting Government.

ARTICLE 5

The Contracting Governments will encourage the closest collaboration between the learned societies of their respective territories

[3] ' Treaty Series No. 66 (1946) ', Cmd. 7002.

for the purpose of providing mutual aid in intellectual, artistic, scientific, civic and social activities.

Article 6

The Contracting Governments will examine the conditions under which examinations, both entrance and degree, conducted in the territory of one of them may be recognised in the territory of the other as having the same value as corresponding examinations in the latter territory for academic purposes and in appropriate cases for professional purposes.

Article 7

Each Contracting Government will encourage the development of holiday courses to be attended by academic personnel, teachers, students and school pupils (*a*) of the territory of the other Contracting Government in the territory of the former, and (*b*) of its own territory in the territory of the other Contracting Government.

Article 8

The Contracting Governments will encourage, by invitation and subsidy, reciprocal visits of selected groups for the purpose of developing cultural and professional collaboration.

Article 9

The Contracting Governments will encourage co-operation between recognised youth and national adult education organisations of their respective territories.

Article 10

The Contracting Governments will assist each other in making the culture of each territory better known in the other territory by means of :—

(*a*) Books, periodicals and other publications;
(*b*) Lectures and concerts;
(*c*) Fine art and other exhibitions;
(*d*) Dramatic performances;
(*e*) Radio, films, gramophone records and other mechanical means.

Article 11

For the purpose of the application of this Convention, a permanent Mixed Commission, consisting of ten members, who need not necessarily be Government officials, will be set up. This Commission will be divided into two sections, one composed of Belgian members and sitting in Brussels, the other composed of British members and sitting in London. Each section shall consist of five members. The Foreign Office, in agreement with the competent departments of the Government of the United Kingdom,

will nominate the members of the British section, and the Belgian Ministry of Education, in agreement with the Belgian Ministry of Foreign Affairs, will nominate the members of the Belgian section. Each list will be communicated through the diplomatic channel for approval to the other Contracting Government.

Article 12

The complete permanent Mixed Commission will meet when necessary and at least once a year in Belgium and in the United Kingdom in turn. For the purpose of these meetings, the Commission will be presided over by an eleventh member, who will be appointed by the Contracting Government in whose capital the meeting is to take place.

Article 13

(1) One of the first tasks of the Mixed Commission shall be to draw up, at a full meeting, detailed proposals for the application of the present convention. These proposals shall, when approved by the Contracting Governments, be deemed to be an Annex to the present Convention. The approval of the Contracting Governments shall be signified by an Exchange of Notes.

(2) Thereafter the Mixed Commission will review the working of the Convention and propose to the Contracting Governments any modifications of the Annex which may be deemed necessary.

(3) Modifications of the Annex may also be proposed, in the intervals between the meetings of the permanent Mixed Commission, by either section, subject to the consent of the other.

(4) Modifications of the Annex shall come into force when approved by the Contracting Governments. Such approval shall be signified by an exchange of notes.

10

AGREEMENT SUPPLEMENTARY TO THE MONETARY AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF BELGIUM DATED 5th OCTOBER, 1944 [1]

London, 26th February, 1947

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Government of the United Kingdom) and the Government of Belgium,

Desiring to extend the scope of the arrangements resulting from the Monetary Agreement signed in London on 5th October, 1944 (hereinafter referred to as the "principal Agreement"), with a

[1] 'Belgium No. 1 (1944)', Cmd. 6557.

view to facilitating trade and payments and the avoidance of unnecessary restrictions,

Have agreed as follows:—

Article 1

(*a*) The Government of the United Kingdom shall not restrict the availability of sterling at the disposal of the National Bank of Belgium for making payments for current transactions to residents of countries outside the Belgian Monetary Area. These payments shall be deemed to be authorised in pursuance of Article 4 (i) (*c*) of the principal Agreement.

(*b*) The Government of Belgium shall not restrict the acceptance by residents of the Belgian Monetary Area of sterling at the disposal of residents outside the area in settlement for current transactions.

Article 2

The following provision is added to Article 2 (ii) of the principal Agreement:—

> The National Bank of Belgium shall have the right to request the Bank of England to purchase, under the conditions laid down in Article VIII, Section 4 (*a*) of the Articles of Agreement of the International Monetary Fund,[2] any sterling which the first-named bank may hold.

Article 3

There shall be inserted in Article 3 (i) and (ii) of the principal Agreement after the words "official rate" the words "acquired if necessary under the regulations of the International Monetary Fund."

Article 4

The present Agreement shall come into force on 27th February, 1947. It shall cease to have effect three months after the date on which either contracting party has given notice to the other of the intention to terminate.

In witness whereof, the undersigned, duly authorised by their respective Governments, have signed the present Agreement and have affixed thereto their seals.

Done in London, in duplicate, the 26th day of February, 1947.

[L.S.] OBERT DE THIEUSIES.
[L.S.] ERNEST BEVIN.

[2] 'Treaty Series No. 21 (1946)', Cmd. 6885.

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